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REPORTS

FROM

COMMITTEES:

SIXTEEN VOLUMES.

—(8.)—

FICTITIOUS VOTES (SCOTLAND);

METROPOLIS POLICE.

Session

31 *January*——17 *July* 1837.

VOL. XII.

1837.

REPORTS FROM COMMITTEES:

1837.

SIXTEEN VOLUMES:—CONTENTS OF THE

EIGHTH VOLUME.

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FIRST

REPORT

FROM

SELECT COMMITTEE

ON

FICTITIOUS VOTES (SCOTLAND);

WITH THE

MINUTES OF EVIDENCE,

AND APPENDIX.

Ordered, by The House of Commons, *to be Printed,*
18 *April* 1837.

Veneris, 3° die Februarii, 1837.

Ordered, THAT a Select Committee be appointed to inquire how far the intentions of the Reform Bill are defeated by the creating and registering of Fictitious and improper Votes in the Counties of Scotland.

Lunæ, 6° die Februarii, 1837.

Ordered, THAT the Committee do consist of—

Mr. Horsman.	Mr. Dunlop.
Sir William Rae.	Mr. Bingham Baring.
The Lord Advocate.	The O'Connor Don.
Lord Stanley.	Sir Hugh Campbell.
Sir Thomas Fremantle.	Mr. Edward Buller.
Mr. Warburton.	Lord Viscount Stormont.
Mr. Fox Maule.	Mr. Walter Campbell.
Mr. George Ferguson.	

Ordered, THAT the Committee have power to send for Persons, Papers and Records; and that Five be the Quorum of the Committee.

Veneris, 17° die Februarii, 1837.

Ordered, THAT the O'Connor Don be discharged from further attendance, and that Mr. Divett be added to the number of the Committee.

Martis, 11° die Februarii, 1837.

Ordered, THAT the Committee have power to report the Minutes of the Evidence taken before them from time to time to The House.

REPORT.

THE SELECT COMMITTEE appointed to inquire how far the Intentions of the REFORM BILL are defeated by the creating and registering of FICTITIOUS VOTES in the Counties of SCOTLAND, and who were empowered to report the MINUTES OF THE EVIDENCE taken before them from time to time to THE HOUSE:

HAVE examined several Witnesses, whose Evidence they have agreed to report to THE HOUSE.

April 1837.

PROCEEDINGS OF THE COMMITTEE.

Mercurii, 8° die Februarii, 1837.

PRESENT:

The Lord Advocate.
Mr. Fox Maule.
Sir Thomas Fremantle.
Sir Hugh Campbell.
Mr. Horsman.
The O'Connor Don.
Mr. Bingham Baring.
Lord Stanley.
Mr. Walter Campbell.
Captain Ferguson.

Mr. Horsman called to the Chair.

Order of reference read.

The Chairman submitted to the Committee the course of proceeding he proposed the Committee to pursue; that they should commence their Inquiry by examining into the fictitious and improper Votes which are stated in the Petitions referred to the Committee to have been created and registered in the counties of Selkirk and Roxburgh; and he also submitted to the Committee a List of the Witnesses whom he proposed to summon.

Resolved,—That the course of Inquiry recommended by the Chairman be adopted by this Committee, and that he be empowered to summon the Witnesses whose names he has submitted to the Committee.

Jovis, 9° die Martii, 1837.

Question proposed by Sir William Rae, That it is the opinion of this Committee, that in order that the Evidence should be clear, consecutive and intelligible, they will take all the Evidence upon one County before they proceed to take Evidence upon another county.

Amendment proposed by Mr. Walter Campbell, To leave out all the words after the second "that," in order to insert "the examination of Mr. Archibald Douglas as to his knowledge of the purchase of votes in Roxburghshire, is in perfect order, and ought to proceed."

Question put, That the words proposed to be left out stand part of the question.

The Committee divided,—

Ayes - - 3.	Noes - - 4.
Sir William Rae.	Mr. Dunlop.
Lord Stormont.	Mr. Edward Buller.
Sir Hugh Campbell.	The Lord Advocate.
	Mr. Walter Campbell.

So it passed in the Negative.

Question as amended put and agreed to.

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MINUTES OF EVIDENCE.

Martis, 21° *die Februarii*, 1837.

MEMBERS PRESENT.

The Lord Advocate.	Mr. George Ferguson.
Mr. Bingham Baring.	Sir Thomas Fremantle.
Mr. E. Buller.	Mr. Fox Maule.
Sir Hugh Campbell.	Sir William Rae.
Mr. Walter Campbell.	Lord Stanley.
Mr. Divett.	Viscount Stormont.
Mr. Dunlop.	Mr. Warburton.

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. *Robert Haldane*, called in; and Examined.

Mr. *R. Haldane.*

21 February 1837.

1. *Chairman.*] YOU are a writer in the county of Selkirk?—Yes.
2. Reside at Galashiels?—Yes.
3. Have you acted as political agent in that county?—I have.
4. For whom have you acted?—For the liberal party.
5. When were you appointed agent?—In 1832.
6. Previous to the election of 1832?—Previous to the registration of 1832.
7. What was the amount of the constituency at that time in Selkirkshire?—Two hundred and eighty.
8. That was the number that voted at the election for 1832?—The number upon the roll.
9. What was the number that voted in 1832?—257, 133, and 124.
10. Was that what you considered the *bonâ fide* constituency in that county at that time?—It was.
11. They were generally the real possessors of the qualifications upon which they had claimed?—Yes.
12. Was any addition made to the constituency in 1833?—Yes, there was.
13. What were the number of votes added to the roll that year?—Seventy-three.
14. Were they of the same character as the electors that had been enrolled previously as to qualification?—No, I do not think they were.
15. What was the change that took place?—There were a considerable number of votes put upon the registration of 1833 for joint-proprietors, proprietors in life-rent, and joint tenancies.
16. Viscount *Stormont.*] For short or long leases?—The joint tenancies were principally short leases; nine years, I think.
17. *Chairman.*] Can you state the number of joint proprietors who were put on that year?—Fifteen.
18. How many life-rents?—One, and two joint tenants.
19. What was the first case of joint proprietorship?—There were ten electors enrolled upon one property, called the County Inn, in the town of Selkirk.
20. Did they purchase that inn?—Yes.
21. Do you know whether the purchase was or was not a real transaction?—I do not know. The previous proprietor, Wilson, was upon the roll in 1832; he

Mr. *R. Haldane.*

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sold in January 1833, and was denuded of his right, and those ten proprietors were enrolled in the Registration Court of 1833.

22. Do you know whether the price was paid, or only a part of it?—I do not know.

23. You state that those qualifications were not derived in the same manner as qualifications in former years?—Yes; different in the title, from its being unusual or not known that joint proprietors could hold properties in this way.

24. Previous to this time had you ever known an instance of a property acquired in the same manner by joint proprietors as upon that occasion?—No; in 1832 there were a father and son upon the roll as proprietors upon a title dated in 1809, but we had nothing else in Selkirkshire of joint proprietors.

25. Had you ever known, in your practice of the law of Scotland, an instance of joint property by purchase, such as was introduced into Selkirkshire in 1833?—No.

26. Previous to those qualifications having been made out, had you an expectation that such qualifications were going to be made out, or did you know that they were going to be made out?—I believed so; in January 1833 I knew of the purchase, and that there were to be votes put upon it; that it was intended to divide the rent, so as to give as many proprietors as it was capable of.

27. Who were the agents in that purchase?—Mr. Horne and Mr. Rodger.

28. Were those the political agents of the Tory party?—They were.

29. Who were the individuals that purchased this property?—I have a list of the names here; John Chisholm of Stoirches, in Roxburghshire; Gilbert Finlay, writer to the signet, residing in Edinburgh; Robert Scott Moncrieff, at Dalkeith, in Mid Lothian; Charles Neaves, advocate, Edinburgh; George Potts, writer, Hawick, Roxburghshire; Edward Piper, mail-coach contractor, Edinburgh; John Scott, writer to the signet, Edinburgh; William Scott, writer to the signet, Edinburgh; Adam Urquhart, advocate, Edinburgh; Robert Whigham, advocate, Edinburgh; these ten were enrolled in 1833, and William Mitchell Boyd, writer to the signet, Edinburgh, was enrolled the year following, making eleven proprietors upon that inn.

30. Those persons were all unconnected with the county?—Yes, they were all living out of it, and unconnected with the county.

31. Mr. *Maule.*] Had any of them any property in the county, save and except that they have now purchased?—No, I believe not.

32. *Chairman.*] You stated that those eleven persons were enrolled upon that property?—Ten in 1833, and one in 1834.

32.* It was bought, you say, from a man of the name of Wilson, the former proprietor?—Yes.

33. What became of Mr. Wilson?—He was struck off the roll in 1833; I believe he lived in Selkirk; I have seen him since.

34. Did he become tenant of the premises?—No.

35. Was there a fresh tenant put into the premises?—This person, Wilson, was not the occupier of the premises at the time.

36. Who was Wilson's tenant at that time?—Thomas Mitchell.

37. Mitchell is now enrolled as tenant on those premises?—He is enrolled as a joint tenant along with his son; he was enrolled in 1832 as tenant; since that he has been enrolled as joint tenant with his son Thomas.

38. His son Thomas has been taken in as tenant since that date?—Yes.

39. On that property there are at present enrolled eleven proprietors and two tenants?—Yes.

40. What was the other case of joint proprietors?—Four parks or fields in the parish of Selkirk; the gentlemen enrolled upon it that year, 1833, were five.

41. Was there any particular name those fields bore?—They were known in the country by the name of "the Lands of Batts."

42. Five gentlemen were enrolled in the Lands of Batts?—Yes.

43. Was there a purchase by those five gentlemen?—Yes.

44. From whom was that purchased?—From Mr. George Rodger.

45. Is that the agent you have mentioned?—No, his father; he was alive at that time, and was acting as agent for the same party in 1832.

46. It was bought from a gentleman who was at that time political agent of the tory party in Selkirkshire?—Yes.

47. What

47. What was the price which was given?—One thousand nine hundred and ninety-five pounds.

48. Was all that price paid?—I think not, at the time; I saw last year, in the Registration Court, a statement showing how it was settled; it was produced in the Registration Court by Mr. Horne, on some discussion of these votes, and there was, I think, between 600*l.* and 700*l.* of the price paid, and a bill given for the difference.

49. To whom was the bill given for the remainder?—To Mr. Rodger.

50. By whom?—I think by Mr. Horne; I am not quite positive.

51. Given in Mr. Horne's name to Mr. Rodger?—Given by Mr. Horne to Mr. Rodger.

52. You speak of Mr. Horne, to whom you have before referred, the agent?—Yes.

53. Were those votes disputed at the Registration Court?—They were.

54. What was the ground on which they were disputed?—Want of value, I believe, the formal objection; it is customary in the county of Selkirk to object both to the title and to the value; the title produced was considered quite sufficient, and the objection was not held then; there was some discussion on the point of value.

55. When the property was sold by Mr. Rodger to these gentlemen, was the occupation of it changed in any way?—No; it was previously in Mr. Rodger's possession, and remained in it.

56. Mr. Rodger made over a disposition to those five gentlemen?—Yes.

57. Did he remain in possession under a lease from them?—Yes.

58. What rent did he pay for that lease?—Sixty-five pounds a year.

59. Mr. *Warburton.*] He agreed to pay that?—Yes.

60. *Chairman.*] Do you say those votes were disputed before the sheriff?—Yes.

61. On the ground that the subjects were not of that value?—Yes, just so.

62. Did you lead any proof to this effect?—Not in 1833; it was ruled that the stamped lease to Mr. Rodger from the gentleman who had bought from him proved the rent, and they were put on on that ground.

63. Did you instruct any person to examine the property, and report upon the value of it in 1833?—Yes; witnesses examined the property in 1833, but they were not examined before the sheriff.

64. Did you get any persons to examine the property, and report upon its value in 1833?—Yes, I did.

65. Who were those persons; what class of men were they?—I asked three farmers living in the neighbourhood to go and examine the land, and give me a report of its value.

66. To whom did those witnesses give any report?—They told me verbally their opinion of the value of the rent of the land.

67. What did they state to you was the value of the land?—From 38*l.* to 42*l.*

68. Have you any means of knowing what Mr. Rodger himself paid for that property?—Yes; the title under which Mr. Rodger acquired it was laid upon the table in the Registration Court, and the price was 800*l.*, I think.

69. When had he bought it?—In 1808, I think.

70. Can you state whether land had risen or fallen in value much since that period?—Generally, I should say, fallen from 1808 to 1832.

71. Has there been any change upon the land in any way?—I do not know the previous state of the land.

72. Those farmers reported to you that the land was worth from 38*l.* to 42*l.* a year?—Yes.

73. Did the sheriff admit those claims?—He did.

74. Did the sheriff before whom the claim came originally admit those claims?—Yes.

75. Did they go before the Appeal Court?—Not in 1833, I think.

76. If they were admitted in 1833, could they go before the Appeal Court in 1834?—I objected in 1836 to their continuing them upon the roll.

77. Sir *William Rae.*] Was any evidence laid before the sheriff of the value in 1833?—No.

78. *Chairman.*] Were those parties struck off the roll by the sheriff?—They were struck off the roll in 1836.

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79. Mr. *Warburton.*] Suppose the rent to be from 38 *l.* to 42 *l.* a year, what, at the time that 1,995 *l.* was stated to be paid, would be the number of years' purchase such property would bring?—From twenty-eight to thirty years.

80. *Chairman.*] You state, that in 1833 those votes were admitted by the sheriff?—Yes.

81. You objected to them afterwards in 1836?—I did.

82. Did you lead evidence before the sheriff to prove their value?—Yes.

83. Did those farmers come before the sheriff, and state to him what they had stated to you?—There was just one of the three farmers who had examined it in 1833, and three farmers who had examined it in 1836.

84. One of those witnesses gave the same evidence before the sheriff that he had given you?—The value proved in 1836 by the evidence of those four witnesses was from 42 *l.* to 44 *l.*

85. Lord *Stanley.*] Did one of the three farmers who surveyed in 1833, give the same evidence in 1836 which he had given to you privately in 1833?—One of the witnesses had examined the land in 1833; I do not recollect from memory what his value was in 1833, but it was between 38 *l.* and 42 *l.*; but that same person was examined in 1836, and I think his evidence went to between 42 *l.* and 43 *l.*

86. *Chairman.*] Upon that evidence did the sheriff strike off those votes from the roll?—He did in 1836.

87. They were taken to the Appeal Court?—They were.

88. Was the same evidence admitted there?—The same evidence that I adduced in the Registration Court was repeated in the Appeal Court.

89. Was it received?—It was received; the witnesses were examined.

90. The claims were admitted?—The claims were admitted to the roll again; the sheriff's judgment seemed to me to have been given upon the ground that the stamped tack in 1833 was the evidence that ought to lead them in the decision, and they were restored to the roll again.

91. The principle of that judgment was, that the rent was the evidence of the value, and that evidence as to the value was not to be taken?—Yes.

92. Give the names of the five gentlemen that bought this property?—James Curle of Melrose, James Erskine of Melrose, Donald Horne, writer to the signet, Edinburgh, Donald Smith, banker in Glasgow, and John Smith Cunningham of Caprington.

93. Is he a writer in Edinburgh?—I believe he is.

94. Are all those five persons keen political partisans?—I think so.

95. Have any of them any particular connexion with the party?—Yes, Mr. Horne has been acting as the agent of the party both in Roxburghshire and Selkirkshire.

96. Mr. Horne is the agent in Selkirkshire?—Yes.

97. Are there any others in the same situation?—There are no agencies in Selkirkshire; Mr. Curle and Mr. Erskine are writers in Melrose.

98. Are they political agents in Roxburghshire?—Yes.

99. You stated that you objected to them from the want of value, as the price paid appeared to you to be a high price, and as the rent received appeared to you to be a high rent; was the ground of your objection, that you thought it had been a collusive transaction?—No; at the time of lodging the objection I did not know the price; I ascertained that only when the title was put on the table; I made objections both as to the title and the value; but the objection as to value was what I relied on, which I had an opportunity of knowing from the farmers whom I examined.

100. It was generally considered a high price that was given?—Yes, decidedly.

101. It was generally considered a high rent?—Yes.

102. Was it generally believed that that rent had been fixed high for the purpose of qualifying a greater number of voters?—That was my belief.

103. Would any person in a fair transaction have given so high a rent, in your opinion?—No; after hearing the examination of the farmers, they had that same question put to them; and they stated that if it had been fairly in the market, it would not have brought that rent.

104. Did Mr. Horne act as agent for the buyers?—I do not know whether he did or not at the time it was purchased.

105. Whom

105. Whom was the conveyance made to?—To the five gentlemen I have named, and a son of Mr. Smith Cunningham's; it was made to six, but it was discovered, I believe, that Mr. William Cunningham was under age, and there was no claim lodged for him.

106. Are those five persons all that are enrolled upon that property at present?—No; there was a sixth enrolled in 1834.

107. Who was the sixth enrolled?—Mr. Robert Keith Pringle, of the Bombay civil service.

108. Was he brother to the Member for the county?—Yes.

109. You state that there was a life-rent created in that year; who was the person that obtained that life-rent?—James Simson, a farmer at Fauldshope, in Selkirkshire.

110. How did he acquire that life-rent?—He acquired it from his brother, William Simson.

111. Did he make over the life-rent of that property to him, retaining the fee himself?—Yes.

112. Had you ever known an instance of a life-rent being acquired in the same manner in the practice of the law of Scotland before?—That is the first deed I ever saw in my practice.

113. You never knew a life-rent created in that manner before?—No, never.

114. How long have you practised as a conveyancer?—Twelve or thirteen years.

115. Do you recollect who was the agent in that transaction?—Mr. Rodger.

116. Was the person who created that life-rent particularly remarkable for his political opinions?—Yes.

117. Is he a very keen partisan?—Yes; he has made himself very busy in that county.

118. You refer to Mr. William Simson?—Yes.

119. You stated that there were some cases of joint tenancy created; have the goodness to detail them?—The only two cases in 1833 were Robert Brydon and James Paterson.

120. How did they become joint tenants; were they assumed into the lease of the former tenant, or did they take a fresh lease?—There was a lease running with an old tenant, an uncle of the two parties I have named.

121. What was his name?—James Brydon; he was tenant of that farm; the lease he had was to continue for, I think, four years afterwards; that lease was given up, and there was a new lease given by the factor in favour of the whole three parties, the uncle and his two nephews.

122. The factor of whom?—Of Mr. Rutherford, the proprietor.

123. Whose tenants were those?—They were Mr. Rutherford's in 1833.

124. Mr. *Maule.*] Was that an entailed estate?—No.

125. *Chairman.*] Do you know whether or not those two individuals acquired any interest in that farm?—I do not know.

126. Have you any reason to have formed an opinion upon the subject?—I have formed an opinion; I thought one of them, Paterson, was likely to have an interest, and that the other had none.

127. Lord *Stanley.*] Was Mr. Rutherford a very keen partisan?—I do not think he ever exercised his right of voting in the county of Selkirk.

128. Was he in Selkirk at the time?—No; I think he lived on the Continent, so far as I know.

129. By whom was this done?—By Mr. Anthony Dunn.

130. Was he a very keen partisan?—I do not know; I understand he belonged to the liberal party.

131. *Chairman.*] What is the name of the farm upon which Mr. Brydon, the uncle, lives?—He lives at a place called Moodlaw.

132. Has he any other farm except the one at Moodlaw?—He has a number of other farms.

133. Has he assumed joint tenants into all those farms since the registration of 1832?—In all the farms that I know, he has; in the county of Selkirk there are joint tenants along with himself.

134. Will you mention some of them?—He has assumed his brother, Walter Brydon, upon the farm of Phawhope; there is a nephew of his, James Brydon, on the farm of Annoltshope.

135. Assumed with himself?—Yes; there was another nephew, William Brydon, on the farm of Crossleyhill.

Mr. *R. Haldane.*

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136. Has he a farm called Redford Green?—Yes, the first farm I mentioned, where Robert Brydon and James Paterson were assumed.

137. You have mentioned four farms in Selkirkshire, in all of which he has assumed brothers or nephews?—Yes.

138. Do you know that he has farms in Roxburghshire?—He has.

139. Do you know that he has assumed relations into those farms also as joint tenants?—I believe he has; I know he has in one case.

140. Have you any reason to think or to know that in any of those cases he attempted to assume any of his relations into farms in which they had acquired no beneficial interest whatever?—I can speak positively as to one case, William Brydon.

141. Is that a nephew of his?—Yes.

142. Where was that?—At Crossley Hill.

143. In what year was he assumed?—In 1834, I think.

144. What do you know of that?—At the election in January 1835, I desired the polling sheriff to have the oath of trust administered to him, and he refused to take it; I then objected to his continuing on the roll at a following registration.

145. Was that vote admitted?—No; he refused to take that oath, and his vote was not admitted; then in the registration of 1836, I lodged an objection to have him struck off the roll, and he was warned to attend, and I made a reference to his oath to prove the trust I alleged in my objection; he refused to attend, and the sheriff struck him off the roll.

146. At the election in 1835, were you present when the oath was tendered to him?—Yes, I desired it to be done.

147. Can you recollect what passed at that time; did you say any thing?—Yes, it was towards the end of the polling; there was very little doing; the sheriff said to him, "Hold up your hand to take the oath;" he said, "I want to know what I have to swear first;" the sheriff said he would read over the oath first, to see whether he could take it; he read it over, and this man made a comment upon—"I William Brydon;" then when he came to the part, "I hold the same for my own benefit, and not in trust for any other person," he remarked, "No, I will not swear that, because my uncle did not tell me so," and then he walked away.

148. Did you object to the votes of Robert Brydon and James Paterson at the sheriff's court?—Yes.

149. Did you endeavour to discover whether any interest was acquired by those joint tenants?—I did.

150. Did you succeed?—No, I wanted to have the parties examined themselves as to their interest in the farm, and the sheriff would not allow us to go into the question; he allowed us to ask the question, "are you a joint tenant of such a farm;" the investigation being conducted in that way, did not answer.

151. He would not allow the question to be asked, "have you any interest in the farm"?—No.

152. So that you had no opportunity of knowing whether that was the case?—No, he would not allow that separate question to be put.

153. Was that the only case of joint tenancy in 1833?—Yes.

154. Was not there a man of the name of William Grieve admitted as joint tenant in 1833?—Yes; his case is different from that I have stated as to the title of Paterson.

155. Was there a man of the name of William Grieve admitted as a joint tenant in 1833?—He was admitted on part of the farm, the part called Flenwoody; that is part of the farm his father had previously been enrolled upon; and in 1833 his father restricted his right to the farm, exclusive of this part, and the son was enrolled upon that part.

156. Viscount *Stormont.*] The father gave up a part?—The father was enrolled upon the whole of it; it was held upon one lease; he was enrolled in 1833.

157. *Chairman.*] That part he had claimed in 1832?—Yes; he claimed on the same part in 1832, and was rejected, because his father was previously enrolled upon the whole farm.

158. Did he ever show any lease?—No; he endeavoured to support his title by the evidence of a shepherd.

159. Did he produce any other case?—He produced his father's cash-book, showing some money transaction, but there was no money transaction proved.

160. Whose tenant was his father?—The Duke of Buccleuch's.

161. Had

161. Had his father a lease from the Duke of Buccleuch in which his name did not appear?—Yes.

162. In 1832 he was rejected?—Yes.

163. In 1833 he claimed again?—Yes.

164. On what did he found his claim in 1833?—He founded his claim in 1833 upon an agreement between him and his father, and on the evidence of two men whom he brought as witnesses as to his management and disposal of the stock, as if he was the tenant, and the sheriff admitted him upon that evidence.

165. Was there any thing in the wording of the lease which led to his being rejected in 1832?—The lease in favour of his father was exclusive of assignees and sub-tenants.

166. It excluded the father from letting or assuming sub-tenants?—Yes.

167. Upon that he was rejected?—Yes.

168. In the following year was that same lease produced?—Yes.

169. How did he claim upon that lease in the following year?—There was a dispensation by the Duke, authorizing the father to make this sub-set to his son.

170. Was that dispensation on the back of the lease?—Yes.

171. Subsequently to that dispensation the father assigned a part of the farm to his son, and his son was enrolled upon that?—Yes, in 1833.

172. Viscount *Stormont.*] You say he produced his cash-book the first year; what did the contents of the cash-book tend to prove?—I had it not in my own hands; it was stated by the counsel supporting the claim, that it contained markings as evidence of rent paid by the son to the father; whether it contained that, I cannot say.

173. Mr. *Maule.*] In that first year of 1832 there was an express clause in the father's lease which prevented his sub-setting to any person whatever?—Yes.

174. Is that property on which that lease was granted entailed property?—Yes, it is part of the Buccleuch property.

175. Sir *William Rae.*] Was there any evidence produced of there having been a sub-tack, notwithstanding its not having been authorized by the Duke?—The joint claim was supported, to the best of my recollection, by the entries upon his cash-book put upon the table, and by the shepherd produced to give evidence as to the management by the son.

176. Did you see that book?—I saw it upon the table; I did not examine it.

177. Sir *Thomas Fremantle.*] The claim was rejected when he produced the cash-book and the shepherd?—Yes.

178. Sir *William Rae.*] What was the shepherd's evidence?—I think he was not examined; I think that the claim was rejected by the sheriff, on the ground of the father being previously enrolled upon the whole.

179. *Chairman.*] Did you see the lease from the father to the son?—Yes.

180. Who drew it out?—The Duke of Buccleuch's ordinary agent, Mr. Horne.

181. After the Duke's dispensation, the father gave a lease to the son?—Yes.

182. Who drew out that lease?—I cannot say.

183. Sir *William Rae.*] Does it consist with your knowledge that the son was not in possession of that part of the farm?—No, I do not know the fact at all.

184. *Chairman.*] Is the son, to whom that was given, resident in the county at all?—I think he lives with his father in the county of Roxburgh.

185. At what distance?—To the best of my knowledge, ten or twelve miles perhaps.

186. Is it a sheep-farm?—Yes.

187. Lord *Stanley.*] The farm in Roxburgh is not a sheep-farm?—I believe not.

188. The one is an agricultural farm, and the other a rearing farm?—I am satisfied the Duke of Buccleuch's is a rearing farm.

189. It is necessary for persons holding farms in the agricultural districts to have rearing farms for the purpose of rearing sheep; they afterwards bring down and fatten upon their agricultural farms?—Yes, that is very often done.

190. Therefore the one farm is just as much a *bonâ fide* holding as the other, though they are situated in distant counties?—It is considered so; it often happens, I believe.

191. *Chairman.*] For what purpose did you suppose those qualifications were created?—I believe to acquire the right to the franchise in the county.

192. What had been the majority at the preceding election in 1832?—Nine.

193. Lord *Stanley.*] Did you state the price paid for the county inn, which you describe

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describe as having been sold to a sort of joint stock company consisting of ten persons?—No.

194. Do you know what the price was?—I do not know what was the price paid.

195. Did not the disposition set forth the price?—I presume it would, but I cannot state the amount.

196. Sir *William Rae.*] Did not you, as agent for the county, examine the disposition?—Yes.

197. You cannot state whether it specified the price or not?—I have not the least doubt it did, but I do not recollect it.

198. Lord *Stanley.*] Have you any doubt that the parties *bonâ fide* paid the price, and became entitled to the receipts of the rent?—No, I have no reason to doubt that.

199. Have you any doubt those ten gentlemen were the *bonâ fide* owners of this inn, receiving from the tenant their proportions of the rent?—I have no reason to doubt that they drew the rents.

200. Mr. *Dunlop.*] Can you say that Mr. Wilson has still any claim upon it by way of mortgage or otherwise?—I cannot say.

201. Lord *Stanley.*] Was it a public sale?—No.

202. Was it known beforehand that the inn was to be disposed of?—I do not think there was any notice of it.

203. Sir *William Rae.*] Did it consist with your knowledge that it was for sale?—The day it was sold. A number of years ago, I heard it was for sale, but not of late.

204. What number of years ago?—Ten or twelve years ago.

205. You did not hear from that time till the actual sale that it was on sale?—Not until the day of sale.

206. Viscount *Stormont.*] Do you know of any other instance in Scotland of an inn held by joint property?—Yes.

207. Where?—The Torsonce.

208. You yourself are a proprietor of that inn?—Yes.

209. How many proprietors are there upon that inn?—I do not know; I have two shares of the Torsonce Inn; there are 21 shares altogether; I do not know who are the other proprietors.

210. Mr. *Maule.*] Is that what is called a tontine?—Yes, built on shares.

211. Viscount *Stormont.*] You were not one of the original holders?—No.

212. You purchased it?—Yes.

213. You are, in consequence of that purchase, on the register for the county of Edinburgh?—Yes.

214. Mr. *Maule.*] Is it the case that the proprietor who lives longest becomes heir to the whole property?—No.

215. Then it is not a tontine?—I never saw the original deed, but I understand it to be a joint property.

216. Lord *Stanley.*] Do you understand that property to be held under precisely the same circumstances as the County Inn in Selkirk?—I believe the rents are divisible in the same way.

217. Therefore if there was any thing fictitious in this holding, you are yourself subject to the same objection?—I would not have bought but for the vote, certainly.

218. You would not have bought but that you conceived that was guaranteed by the Reform Act?—I bought it, expecting to be put upon the roll in consequence of my purchase.

219. And that from a legal examination of the provisions of the Reform Act, which left no doubt upon your mind as to what the intentions of the Act were?—I certainly considered myself entitled to be put upon the roll.

220. You did not consider that without examining the Reform Act?—I had examined that many times, and considered I was entitled to be put upon the roll.

221. You could have no doubt as to the intentions of the Act?—I thought in 1833 those votes were not exactly contemplated; but when the former registering sheriff so ruled it, I had no doubt in my mind that I was buying what would give me a franchise.

222. As you examined the Act as a lawyer, on what part of the clause did you found your doubt in 1833 whether that species of vote was contemplated?—The form of joint proprietorship, I understood, was not at first contemplated; but when I ascertained that other people were buying, I purchased.

223. From

223. From what part of the Reform Act did you understand that such a vote was not contemplated?—I cannot point out any thing but a general feeling that persons had; I speak of my own impression when I ascertained that was a mode of acquiring property, and that persons were registered in that way, I had no doubt they were well informed.

[*The Witness was directed to withdraw;—after a short time the Witness was again called in.*

224. Lord *Stanley.*] Upon what part of the Reform Bill did you found your doubt as to the intentions of the Legislature with regard to this class of votes in 1833?—My doubt was before I had any experience in election matters in Scotland; it was quite new to me in the year 1832 to take any active part at all in any such thing; my general feeling was merely the belief that purchasing properties jointly to acquire a franchise was not contemplated.

225. Are the Committee to understand that this impression which you describe yourself to have been under was before your examination of the provisions of the Reform Act as a lawyer, and that upon the subsequent examination of them you had no doubt at all as to the intentions of the enactment?—I am talking first of the general impression we had before experience of any question that this was not contemplated then; after some little experience, I came to see that it was a mode of acquiring property that the seventh section of the statute recognized.

226. That it did distinctly recognize?—I thought so.

227. Consequently your opinion is, that by the creation of votes of this description, under which you have a legal right to vote for the county of Edinburgh, there is no violation of the provisions of the Reform Act?—Not of the words; I have no doubt of the wording of the statute, but I thought the spirit of it did not contemplate these votes, and I have the same belief at this moment, that I acquired improperly my right to vote in the county of Edinburgh.

228. From whence as a lawyer do you derive your inference of the intention of the Act, except from the provisions of the Act?—I thought the intention was to give a right of representation to property.

229. How do you as a lawyer draw an inference of the intention of the Act, except from the express provisions of the Act?—I had then no experience in these matters, but since I have had, I am satisfied that the wording of this Act and the construction given to it by all the registering sheriffs, is agreeable to the Act itself.

230. Do you conceive that the wording leaves no doubt as to the intention of the Legislature?—My impression at first——

231. What is your impression now; do you believe that the wording of the Act leaves no doubt as to the intention of the Legislature at the time of passing the Act?—I do not think it was contemplated by the Legislature that property was to be cut up into 10*l.* qualifications, and that I say now.

232. From what part of the Act do you derive the impression that that was not contemplated which the Act itself appears distinctly to recognize?—From the general spirit of the Act.

233. You conceive the words and the terms of the enactment itself are clearly liable to no doubt?—No, I have not the least doubt that the words and the construction given to the whole of that clause recognizes these joint proprietaries.

234. Was the case of joint proprietorship a case omitted or specially provided for in the Act?—There is the expression in it; it talks of joint and several tenancies, I think.

235. Mr. *Warburton.*] Will you refer to clause 8?—"Co-proprietors or joint owners shall be entitled each to vote in respect of their joint property within the shire."

236. Lord *Stanley.*] You see that the right of joint proprietors to vote in respect of their property is a case which is specifically provided for and recognized by the Act of Parliament, that the intentions of the Act upon that subject cannot be doubtful?—Exactly so.

237. Have you any reason to suppose that in this case the sale or the purchase was fraudulent or colourable in any manner or way?—No, I have not.

238. Viscount *Stormont.*] With respect to Torsonce Inn, in the county of Edinburgh, when was that inn built and the original shares in that inn taken?—I

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dare say it will be twenty years, or more, since it was built; I do not know the number of years, but a good many.

239. At the time that inn was first built and those shares were first taken, there had been joint proprietors upon that property?—I believe so.

240. That being the case, explain to the Committee how it was you stated that you had never known previous to the year 1832 a case where several had combined together to purchase an inn?—I stated that in reference to this statute acquiring property for the purpose of acquiring a franchise, and being put upon the roll for voting.

241. *Chairman.*] Was the inn at Torsonce built on joint shares?—I believe so.

242. Viscount *Stormont.*] No such person could have voted before 1832, therefore no person could claim before 1832; you say you never knew a case before 1832 where there were joint proprietors?—I do not know yet any case where there were joint proprietors by purchase for this purpose; I understood the question to be put to me in that way.

243. The question put to you from the Chair was, did you ever know a case of joint proprietorship before, to which you said "no"; was not this case, where these shares were sold and purchased, previous to 1832?—I had not my own right, and I do not know how that was previous to 1832; I acquired my right only in 1833 or 1834; they built it on shares.

244. Mr. *Maule.*] Do you conceive the case of the inn at Torsonce's to be a parallel case to that at Selkirk?—Not in regard to acquiring a right.

245. You stated that this purchase of the inn at Selkirk was made; have you any reason to doubt its being a *bonâ fide* transaction?—No.

246. When a purchase is made of this kind by persons in the situation of these claimants, is an infeoffment generally taken upon the property?—I consider so; I do so myself.

247. Do you know that it is so?—In my practice it is for my clients to have themselves infeoffed on making a purchase.

248. Was infeoffment taken at Selkirk?—Not at the time; there was no title produced, except the disposition by Wilson to the purchasers.

249. *Lord Advocate.*] You state that you do not recollect the price paid for the inn at Selkirk?—I do not.

250. Do you recollect whether it was considered as a high price or a reasonable price?—Though I cannot recollect the price, it was talked of as a high price; I must have known the price in 1833, though I cannot recollect it at this moment.

251. Do you know the circumstances under which Torsonce's Inn was originally acquired; was it not with a view to establishing an inn, where it could not be done without that?—I understood that the original intention of the gentlemen was to put down an inn as an accommodation to the public, as nobody would do it but themselves.

252. In the purchase of the inn at Selkirk, it was acquiring an inn which was previously built?—Yes.

253. Did you ever know a precedent of an inn previously built being acquired by joint shares?—No, except Torsonce.

254. Sir *Hugh Campbell.*] Did not you acquire your vote in that way?—That was subsequently to the inn being built.

255. *Chairman.*] When did you purchase your share in that inn?—I think in 1834.

256. Was your buying a share of that inn at Torsonce, in consequence of the system that was introduced of these joint properties, which began in Selkirk in 1832?—Yes; I acquired my right to my shares for the purpose alone of giving me a right to vote in Mid Lothian.

257. Your impression is, that that was not such a transaction as was intended by the Reform Bill?—I would not have bought, if I had not expected a right of voting to be attached to it.

258. Sir *William Rae.*] You did not examine the original right to the property at the time you made the purchase?—No.

259. Do you know when this inn at Selkirk was built?—I should think it was an oldish house.

260. Do you know whether it always belonged to one proprietor before, or was in joint property before?—I do not know.

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261. Mr. *Dunlop.*] With regard to the fields, which you say were bought, was not there something very singular in that transaction; what was the amount paid?—One thousand nine hundred and ninety-five pounds.

262. What was the calculated value of them?—Judging from the rents that were given to me, I should say somewhere between twenty-eight and thirty years' purchase would be the marketable value.

263. That would be somewhere about 1,200*l.*?—Yes.

264. How much of that money was paid?—I think about 800*l.*, and a bill given for the difference.

265. Viscount *Stormont.*] You know that as a fact?—I saw a statement put on the table of the Registration Court, bearing this upon the face of it.

266. Mr. *Dunlop.*] Do you know any reason why parties in collusion with each other might not have taken the lease at double the sum stated; it is at 65*l.*; why should it not have been 130*l.* instead of 65*l.*?—No; I think making the price large, and the rent large, would have been consistent.

267. Is it within your knowledge that a bill was given for part of the price?—Yes.

268. You say that the former proprietors remained tenants, paying an exorbitant rent, the purchasers having given a bill as part of the price; do you see any reason why that bill and that rent might not have been increased to any extent?—I think they might.

269. If these fields are held good for five votes, you can see no reason why they might not be held good for twenty votes?—No, on the same principle.

270. If sheriffs are to take a stamped lease as evidence of value, you see no reason why they might not qualify any number of voters they might please to put on?—On the same principle on which these are made.

271. Sir *Thomas Fremantle.*] Is it decided in the Registration Courts that the sheriffs are restricted from inquiring into the point of value, and are limited to the amount of rent in the stamped tack?—The practice in proving claims was invariably, when there was a stamped lease, by producing that lease, and further, when there was no stamped lease, an unstamped minute, the certificate or the evidence of the landlord or his factor was received in the Registration Court, so far as I know, as evidence.

272. In cases where there is a stamp lease produced, is it the practice in the Registration Court to receive that as conclusive evidence, and to refuse all other evidence of value?—I think in the Selkirkshire Registration Court, that is the only case where I recollect that question to have been raised, and the sheriff of Selkirkshire admitted parol proof, and struck those gentlemen off the roll; and at the Appeal Court, I think the court went principally upon the stamped lease in 1832 being produced, and the rent being set forth in it as being the rent of the subject claimed on.

273. Do any of the Appeal Courts receive any other evidence of the value besides the rent as set forth in the stamped lease?—I think Mr. Rodger, the son of the gentleman who sold it, was in court, and that he was examined; the lease was put into his hands, and he was asked whether that was his father's signature, and whether he thought it an extravagant rent; as far as I recollect, those were the questions put to him.

274. Were any surveyors called in the Appeal Court to prove that the rent of that property was exorbitant?—Yes, farmers were examined.

275. Did the sheriff take their evidence?—He received the evidence.

276. Having received the evidence, he admitted the vote?—He decided contrary to the evidence.

277. Did the sheriff refuse to take evidence, and rest solely on the stamped lease, or did he take evidence, and afterwards decide the case?—He took evidence.

278. In the Appeal Court, as well as in the court below, evidence as to value was examined?—Yes, witnesses were examined.

279. Upon that evidence the question was decided?—Yes.

280. Sir *William Rae.*] Was there any evidence of value given at first before the sheriff?—I think there was no evidence of value produced; there was the lease when it was enrolled.

281. Sir *Thomas Fremantle.*] When you brought it before the court in 1836, the farmers were examined?—Yes.

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282. Sir *William Rae.*] There was evidence before the Appeal Court as well a. the stamped tack?—There was evidence, not of the rent, so far as I can recollect but evidence of value by the farmers that I asked to survey.

283. Viscount *Stormont.*] Was there evidence on the other side?—No; there were no witnesses examined for the claimant in the Registration Court, relying, I suppose, upon the lease; but when the sheriff expunged them from the roll they marked a number of farmers as witnesses for the Appeal Court, but they were none of them examined.

284. Mr. *Warburton.*] Were they in attendance?—I do not know; I cannot say that.

285. But they were not examined?—No.

286. Lord *Stanley.*] Will you explain the answer you gave upon the former occasion, as to some evidence having been repeated in the Appeal Court?—In 1836, believing, from reports I heard, that this land was not of sufficient value, I had it examined, and then I objected to the gentlemen continuing upon the roll; in support of my objection, I examined three or four farmers before the sheriff of the county; there were no witnesses examined by the other gentlemen in support of the claim, relying, as I supposed, on the stamped lease, the sheriff of Selkirkshire struck them off the roll; there was an appeal taken, and I entered in the sheriff's notes the witnesses I had examined in support of my objections, and the other gentlemen entered a number of witnesses, farmers, to prove the value at the Appeal Court; I had the witnesses re-examined that I had examined, but there were no farmers, as to the value examined by the claimants.

287. It was not thought necessary to examine on that side, inasmuch as the sheriff held that there was sufficient evidence by the amount of rent which appeared upon the tack?—I think the only person examined on that side was Mr. Rodger, who proved the lease, and I think he was asked, whether the rent was an exorbitant rent, and I think he said he did not consider it so.

288. Is that a single decision, or is there any doubt in the minds of lawyers in Scotland as to the fact of the amount of rent appearing upon the face of the lease being sufficient, and conclusive as to the value?—I do not recollect any other case in the county of Selkirk; I have heard of a case in the county of Roxburgh; I am not sure whether it belonged to the county or a burgh, where the sheriff of the county of Roxburgh thought the rent in the lease was not a conclusive proof, and witnesses were examined.

289. You consider that, so far as your knowledge goes, to be a doubtful point with regard to the interpretation and the meaning of the Act, and a case on which there have been conflicting decisions?—Those are the only two cases I have heard of.

290. According to your recollection, those cases have been differently decided?—Yes; the sheriff decided to receive evidence; whether he was in the minority or not, I do not know, but it appears to me it is generally determined on the lease.

291. You stated, that the person selling, who was previously both owner and occupier, continued in the occupation, and took a back lease from the persons to whom he sold; is that case capable of being brought in evidence in objection to the votes, as stamping them with a fictitious and a colourable character?—I thought those votes fictitious and colourable from the evidence, it is so different from the ordinary transaction.

292. Is the case of a person selling, having received a back lease, capable of being proved, upon an objection to those votes upon the ground of that being a fictitious and colourable proceeding; should you be entitled to take that as an objection to a vote?—I took that objection in that case; the person selling taking a back lease, rendered it, in my estimation, suspicious that it was a transaction in which, if the same gentleman had not been selling and got that price, he would not have given the same amount of rent.

293. Is that case one which is a legal objection to the validity of the vote?—It has not been held so in any of the courts.

294. Are you aware whether the question has been brought before a court?—Only within the last three years.

295. A back lease, reserving a rent precisely equal in amount to the interest of the purchase money, would not be held to throw that suspicion on the vote which would throw it off the register?—No, I think not.

296. *Chairman.*]

296. *Chairman.*] In the course of your practice, can you state positively that that has not been held a sufficient objection to disqualify a claimant, he having taken a back lease, and given an exact equivalent to the interest of the purchase money?—I think it has been often and often decided that a back lease is no objection, but I am not aware exactly that the interest of the purchase money and the rent has been precisely the same thing.

297. *Lord Advocate.*] You state that you were present when the decision was given by the sheriffs on the appeal with respect to the property of Batts?—I was.

298. Witnesses were examined with regard to the value?—Yes.

299. There were no witnesses examined on the other side?—No, there were not.

300. Did the sheriffs take any evidence with regard to value, or did they consider themselves bound to decide on the terms of the lease, without reference to what the evidence of value might be?—I considered that to have been decided by the court, on the principle that they should go by the terms of the lease, and not by parole proof.

301. Whatever it might be?—I understood that was their rule.

302. Viscount *Stormont.*] Did the sheriffs pledge themselves to that?—In giving their decision they said that the stamped lease ought to be the ground of their decision.

303. Sir *Thomas Fremantle.*] Were your farmers examined?—Yes.

304. Was their evidence at all shaken by their cross-examination?—I am not aware that it was.

305. Sir *William Rae.*] Those parties were enrolled in 1833 first?—Yes.

306. At the time you made inquiries of several farmers they informed you the farms were not of the value they were held out to be?—Yes.

307. Why did you not bring forward their evidence at that time?—The counsel we laid these cases before was of opinion that the stamped lease was hollow against us, and he would not examine those witnesses.

308. After that the same reason continued to prevail through the succeeding years till 1835?—I consulted counsel in 1836, whether that evidence would be received, and I was advised to take the objection, and I did so.

309. Mr. *Dunlop.*] Do you think it would very much facilitate coming at the truth in cases of joint tenancy were persons enabled to be examined as to the real *boná fide* interests which they take upon the farm?—I think it would.

310. Viscount *Stormont.*] With respect to the case of James Simson, will you state the circumstances under which that life-rent was granted; where was the subject of the life-rent?—In the town of Selkirk.

311. What was it?—Houses.

312. To what amount?—Beyond the 10*l.*

313. Do you know how far beyond the 10*l.*?—No, I do not.

314. Has William Simson much property in the town of Selkirk?—He has some land, I believe, besides.

315. Has he many houses?—I do not know whether he has any more; he has registered himself, but he has registered on a farm as tenant; I have heard he has some land.

316. How much land?—A few acres.

317. A very few acres, or what quantity of land?—Probably six, eight, or ten acres; I understood it to be a small thing, but I cannot say positively.

318. Did he in succeeding years make any more life-rents?—No.

319. Lord *Stanley.*] You stated with respect to this deed, it was the first you ever saw of the kind, will you state in what respect it differed from any former life-rent?—The life-rents I have been accustomed to see have been always by a different sort of title; supposing I was purchasing property, I take it to myself in life-rent and to my children in fee; but I have not seen any case where one person was giving another a life-rent, and reserving the fee to himself.

320. Viscount *Stormont.*] The consideration was favour and affection, was it not?—I do not know.

321. Sir *Thomas Fremantle.*] Have you any reason to doubt the life-renter received the rents and profits?—I do not know any thing upon the subject.

322. You do not bring the case forward as a colourable one?—It was the first I had seen in that style.

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323. Do you state to the Committee that it is a colourable transaction?—No, I cannot state that; I do not know any reason why one brother may not give another brother a life-rent.

324. Viscount *Stormont.*] This is a case of one brother giving to another a life-rent of 10 *l.* or 12 *l.*?—Yes; I suppose it to be for the sake of qualifying his brother as an elector.

325. Mr. *Maule.*] You considered the disposition to be made for the purpose of qualifying his brother to vote?—I did.

326. Do you consider that this brother could dispose of the interest in the life-rent he has received from his brother, without the authority of the person from whom he has received it?—There was nothing upon the face of the deed limiting it; I do not know what the understanding might be.

327. Sir *William Rae.*] Legally, there could be no objection to his disposing of it, if he chose to do so?—I think not, from reading the deed.

328. Lord *Stanley.*] You say Brydon had a good number of farms, and that in all of them he has made joint tenants?—Yes.

329. Is Brydon a married man?—No, a bachelor.

330. A rich old bachelor, pretty well to do in the world?—Yes.

331. Those joint tenants are nephews?—There was one brother; the others are nephews.

332. His nearest relations?—Yes.

333. The sort of people who would be all looking out, if he died, to be heirs, one of one part and another of another?—Very likely they are all expectants.

334. During his life he has admitted one nephew to share with him on one farm, and another nephew on another?—I do not know whether they do share; they are put on the leases; whether they have any benefit of profits, or run the risk of losses, I cannot tell; I wanted to go into that examination, but the sheriff would not allow it.

335. Do any of them reside upon those farms?—Yes, two of them, Robert Brydon and Paterson do.

336. You have no reason to doubt that they have an interest in the stock?—I have no reason, except what I said at first; my impression is that Paterson was likely to have an interest, but that the other was a young man, and could not have any interest unless it was given to him.

337. In one of these cases, the party, on being applied to, refused to swear that he had an interest?—Yes.

338. Was the same test applied to the others?—It was the one refusing it which induced me to bring the objection.

339. Then you put the oath to the others?—Yes.

340. And they took it?—Yes.

341. Have you any any reason to doubt that they took it properly?—No.

342. The state of the law threw that person off the register where he refused to take the oath; in the case where they took the oath there was reason to suppose they had a *bonâ fide* interest?—I cannot say that I know any thing to contradict that.

343. You do not put forward the case of Brydon as the case of a colourable vote, contrary to the intentions of the Reform Act?—In so far I cannot say that I have any reason to know or to doubt that the uncle gave his relations *bonâ fide* interests in those farms.

344. Have you not stated as your reason for believing that, that credible witnesses swore it was so?—There were no witnesses sworn.

345. Those parties you would state to be worthy of credit on their oath?—Yes, I do.

346. What ground have you to set against the explicit oath of a credible witness?—Just this; they might be under a mistaken notion as to their rights; I wanted to go into the inquiry whether they had property in the stock, and a chance of losses and gains; the sheriff would not allow me to go into that.

347. Mr. *Maule.*] If the sheriff had allowed you, you were prepared to go into proof of their not having a *bonâ fide* interest in those farms?—No, not exactly so; I wished to go into that rather to satisfy me whether they had or not.

348. Lord *Stanley.*] Had you reason for suspicion in any of these cases?—The only reason for suspicion was, after the first election the uncle giving them all rights in this way; I wished to have it removed or confirmed.

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349. Sir *Thomas Fremantle.*] Did you offer to the sheriff any proof to the contrary?—Not separately from their examinations.

350. Viscount *Stormont.*] Were they each individually answerable for their rent?—I think so; when there were leases produced, and I saw they were bound to the landlord in one or two cases, or however, at all events, when evidence was received in those cases where the claims were by persons whom I considered respectable, and the rent more than 50*l.*, I did not urge any further objection when that was certified by the landlord or a respectable factor, the parties received it across the table as answering the objection.

351. You saw some of those leases?—Yes, I saw one of them.

352. Did you understand by that lease that the parties were individually bound for the rent?—Yes.

353. *Lord Advocate.*] According to the lease the parties were each liable?—Yes.

354. Was it your impression, independent of that, that Mr. Brydon meant to give them an interest in that lease?—My impression was that they had not, if they were not bound to pay the rent, a real interest in the farm.

355. That they were fictitious?—Yes, that was my impression.

356. You stated that one was examined on oath on a similar case, and that he personally refused to take the oath?—Yes.

357. Do you reckon that when a party is interested in making out his own case, it is a very good mode of evidence to refer it to his own oath; that referring it to a person's own oath is the best way of getting out the truth?—Yes, the result proves it so very often.

358. Do you find that parties are apt to be partial in giving their evidence where they are interested?—Yes, I have found that certainly.

359. Mr. *Maule.*] If the sheriff had allowed you to go into this evidence of *bonâ fide* interests by these joint tenants, would you have examined those individuals upon oath and cross-examined them?—Certainly, I would.

360. *Chairman.*] Do you think you might then have proved that they had no beneficial interest?—I was desirous to go into it upon the belief that I should.

361. Mr. *Maule.*] Would you have had more confidence in such an examination than in the event of the oath tendered at the poll?—Yes.

362. Sir *Hugh Campbell.*] If the sheriff had allowed you to go into that examination, had you any distinct view in your examination, or were you just going to work to bring out any thing you could?—One of my principal reasons for wishing to go into that was, the knowledge that the parties themselves were not enabled to make such a purchase; that they could only have it by a gift from their uncle, and I doubted whether their uncle had given it them.

363. You doubted whether there was not something wrong in the transaction, and you thought that if you were allowed to go into it you should find that out, not that you knew of any thing wrong in the leases?—Yes.

364. Sir *William Rae.*] This chief lease was prepared, you say, by the factor of the absent owner, a Mr. Dunn, attached to the liberal side in politics?—Yes.

365. Did you bear upon your mind how far a liberal agent would be likely to lend himself to a transaction to benefit the other party?—I applied to him upon the subject, and his answer was, that as agent for the landlord having the original tenant remaining bound and the security of two additional names, the landlord could not be worse, and therefore he gave in to it.

366. Sir *Hugh Campbell.*] Did you not state that those persons were the nearest relations of the tenant?—Yes.

367. Sir *William Rae.*] What is the age of the old man?—Seventy, I should think; perhaps more.

368. You are sure he is not eighty?—I should think not.

369. Or approaching that?—He does not look like it.

370. What is the age of the young men with him?—I do not know Paterson, I do not recollect his appearance; the other man, Brydon, appeared about five-and-twenty or thirty.

371. What is the length of the lease?—Four years, I think, from that time.

372. That was the old lease?—I think the renewed lease is for the same time as the old.

373. Sir *Hugh Campbell.*] The new one includes the old tenant and the two new ones?—Yes.

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374. Sir *Thomas Fremantle.*] William Grieves first claimed in 1832?—Yes.

375. At that time he claimed to be joint tenant with his father, but showed no lease, was he admitted on the register that year?—No.

376. That was at the time he produced his father's cash-book and the shepherd?—Yes, I think so.

377. The next year he claimed again?—Yes.

378. Did it appear that he had a good lease at that time?—I think he did not claim as joint tenant of the whole farm with his father; his father was enrolled upon the whole farm in 1832, and the son ultimately enrolled upon part of it; the son was not enrolled in 1832, for the reason that his father was enrolled as tenant, and that his father had no power to sub-let.

379. Did he produce in 1833 his lease of that part on which he claimed to be enrolled?—He produced a dispensation to his father to sub-let, and such documents following that as induced the sheriff to enrol him.

380. Had you any reason to doubt whether, under the power thus given to sub-let and those documents he produced, he was a good tenant of the land, and entitled to be enrolled at the Registration Court?—The proof adduced was sufficient to satisfy me that he had acquired a right to be put upon the roll, and he was put upon the roll.

381. He lived at the time with his father, in Roxburghshire?—Yes.

382. Mr. *Maule.*] He did not produce any actual lease?—I think what he produced was a sub-lease from his father.

383. Sir *Hugh Campbell.*] This man had been for some time employed upon the farm, taking charge of the stock?—No, I do not think he had; I do not believe he lived upon the farm; I think it was managed by the shepherds he hired.

384. The man had employed himself to a certain extent with the stock upon this farm?—The shepherd was brought forward to show that the claimant was taking the charge of the farm.

385. Mr. *E. Buller.*] You have stated that the land in Roxburghshire, where he resided, was an arable farm; the farm in Selkirkshire was a rearing farm?—Yes.

386. Is it possible for a man to occupy a small portion of that rearing farm with profit?—There are small farms let in the county of Selkirk perhaps as small as this would be.

387. Do you happen to know the extent of it?—I do not know exactly the proportion; my impression is, that the whole rent he was to pay was less than 100 *l.* or about 100 *l.*

388. Sir *William Rae.*] It was not a particular part of the land he was to occupy, but it was to be a joint possession?—No, it was a particular part of the land.

389. Mr. *Maule.*] There was a farm-house upon it?—Not upon Henwoody Heath; a farm-house upon the Buccleuch part of it.

390. There was no farm-house on the farm he registered?—I think no farm-house; there may be a shepherd's house, perhaps.

391. Viscount *Stormont.*] Are there not a great many farms in that part of the country upon which there is no residence?—Yes, only for their servants.

392. There are a great many farms of that description?—A great many.

393. Mr. *Maule.*] You stated that the inn at Selkirk was not sold by public advertisement or public roup?—No.

394. How did you come by your share of the inn at Torsonce?—I bought it privately, by a gentleman telling me he had it to sell.

395. Viscount *Stormont.*] There was no public advertisement or roup upon that occasion?—No.

396. *Chairman.*] Did you buy that share of the inn in consequence of the practice being adopted of both parties buying as many as they could?—Yes.

397. And subsequent to the purchase of the inn at Selkirk?—Yes.

398. Sir *William Rae.*] When was your purchase made?—In 1834.

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MEMBERS PRESENT.

The Lord Advocate.	Mr. George Ferguson.
Mr. Bingham Baring.	Mr. Fox Maule.
Mr. E. Buller.	Sir William Rae.
Sir Hugh Campbell.	Lord Stanley.
Mr. W. Campbell.	Viscount Stormont.
Mr. Divett.	Mr. Warburton.
Mr. Dunlop.	

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. *Robert Haldane*, again called in; and further Examined.

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399. Lord *Stanley.*] YOUR evidence yesterday related entirely to votes put upon the register in 1833?—Yes.

400. You stated that there were in that year 73 additions to the roll?—Yes, I think so.

401. Out of those you specified 18, which you considered to be objectionable; are the Committee to understand, therefore, that in regard to the balance between the 18 and the 73, you consider them to have been unobjectionable votes?—I think there are some other votes enrolled in that year as to which my impression remains which I had at the time I made the objection, that they were challengeable votes, and I challenged them, and was unsuccessful in bringing legal evidence in support of my objections.

402. Upon what grounds was it you considered those to have been colourable votes; and how do you distinguish them from those you selected yesterday, under the three heads of joint proprietors, life-rents and joint tenants, which you stated to amount to 18?—I mentioned those as the most prominent cases coming under my own observation, but I think there were other individual cases in which I had the same impression as that I had with regard to those I mentioned.

403. Mr. *Warburton.*] You mean besides the 18?—Yes.

404. *Chairman.*] Are the Committee to understand that those three cases you have alluded to, of joint proprietors, life-renters and joint tenants, were a sort of qualification hitherto unusual in the county?—That of joint proprietors and life-renters; there were no life-rents of the same description in 1832 as were introduced in 1833.

405. Were there other cases where there was the same kind of title as formerly, of persons holding single properties which you think were suspicious?—Yes; I objected to a good many more; I have not got the list of the whole 73 at present; I would look it over; I have the means of information in London from books I brought with me, but I have not them with me here; I can inform myself with respect to the other cases, if the Committee wish it.

406. Sir *William Rae.*] You are not at present in a situation to speak to any of them?—No; I have the copies of claims lodged by all the parties, and by looking over those, I could state what I thought the cases were.

407. *Chairman.*] Those were principally individual cases?—Yes.

408. Mr. *Divett.*] Do you mean to state that you have not taken pains to investigate the other 55 cases?—I have looked over the books and saw the particular cases; those which I gave were just as the most prominent, and the others are single votes, to the best of my recollection; there are no other double votes in that year.

409. Lord *Stanley.*] There were, according to your recollection, no other joint proprietors, no other life-renters, and no other joint tenants?—I think so at this moment.

410. The other votes which remain were questions arising on value, and other matters resting on their single and separate merits, which you do not wish to

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bring forward for the consideration of the Committee?—The notes I have here I have taken from my books of the cases where I thought the rights were acquired merely for the purpose of obtaining the franchise.

411. Those you have stated are the only cases in 1833, which you wish to lay before the Committee for their opinion?—Yes.

412. Mr. *Warburton.*] Do you mean that there are no other cases out of the 55 which you think come under the same character as the 18 which you have already detailed to the Committee?—I should like to look over them carefully again before I answer that.

413. You do not wish to give a decided opinion upon that point till you have examined your books?—Just so.

414. *Chairman.*] Have you brought forward those cases because you thought they were bad cases, and because you thought them the most flagrant and the most easy to be proved?—I took them out of the list as those I considered the most flagrant cases.

415. What was the list you took them out of?—I took them from the claims lodged by both parties.

416. Did that list contain other claims which you considered suspicious?—It contained a number, in which I lodged objections, thinking the parties had not obtained a *bonâ fide* interest in the properties.

417. Though you failed in having them struck off, you still hold to the opinion that they were suspicious cases?—A number of the remaining 55.

418. Was the reason for your not bringing those forward that you thought the others the most flagrant, and by which you could best establish your case?—Yes.

419. Lord *Stanley.*] Do you or not say there were in that year any other cases of joint tenancy or of joint proprietorship put upon the list?—I should like to look over my list before I answer that question.

420. *Chairman.*] You may have a strong conviction in your mind that the qualification is not a good one, though it is not the case of a joint proprietor or joint tenant?—Yes; I have my impression remaining that there are bad voters upon the roll; though I could not legally establish my supposition, I still retain it in my own mind.

421. Mr. *W. Campbell.*] You considered that the qualification produced was, in fact, a fictitious qualification?—Yes, that was my impression, though I could not get sufficient evidence to support that case before the sheriff.

422. Viscount *Stormont.*] Do you consider that a new system was introduced in 1833 of joint tenancies, or that they previously existed in the county?—There were cases in the county of joint tenancy in 1832 under long leases.

423. How many?—Several, certainly; perhaps eight or ten.

424. With regard to joint tenants under long leases, was this a new system introduced of having joint tenancy under long leases?—I was wishing to have an opportunity of explaining; in making out my tables, we consider those as proprietors who have long leases, and I have classed them under that head, those holding long leases, and so on; I should require some time to distinguish, provided they are to be counted as joint tenants and not as joint proprietors.

425. *Chairman.*] Does that apply to agricultural tenants?—No, tenants of houses renewable at ninety-nine years; we have no other long leases in the town of Galashiels excepting very long leases.

426. That respects house property?—Yes.

427. Have you any cases of 57 years leases?—No; I am not aware of any case of 57 years leases.

428. Do you mean to say there were no joint tenants, under long leases, registered in the year 1832?—I think not; if those 99 years leases are to be classed as tenants I think it is likely there would be.

429. Lord *Stanley.*] Were there any 50*l.* joint tenants registered in 1832?—Yes, eight or ten, I should think.

430. *Chairman.*] When you spoke of joint tenancies yesterday, did you mean that joint tenancy was a new system, or that that continued as a mode of enrolment in the county?—I state that as the case of tenants assumed under current leases, I think different from those in 1832; there were joint tenants enrolled in 1832.

431. Where was the difference in the circumstances?—Those more particularly of Brydon and Paterson; an old lease was done away with, in favour of one man, and a new lease taken in favour of three.

432. Did you suppose there was no object in doing that?—I believed it was to acquire the franchise.

433. Was that your reason for bringing it forward?—Yes.

434. Mr. *Maule.*] Are you aware whether there was any change in the amount of rent in those leases between the old and the new lease?—No, I believe the rent continued the same.

435. *Chairman.*] In 1834, what additional number of votes were put on the registration?—One hundred and fifty-six.

436. Will you separate those, and state how many as proprietors?—One hundred and nineteen as proprietors.

437. Viscount *Stormont.*] What do you mean by the word proprietor; you state that you reckoned tenants, under long leases, as proprietors?—In the 119 there are a number of tenants, under those leases of 99 years classed.

438. *Chairman.*] In what character did they claim?—They claimed in Selkirkshire as tenants.

439. The 119 whom you have there classed as proprietors, is that the qualification under which they claimed?—It is a classification of my own, consisting principally of persons claiming as proprietors of lands and houses, and partly of tenants under those long leases.

440. Those leases of 99 years were renewable?—Yes, renewable at the end of every 99 years.

441. How many life-renters are there in that year?—Ten.

442. How many tenants?—Twenty-seven.

443. *Lord Advocate.*] Can you state what number of the 119 were tenants under 99 years leases?—Not at this moment, but I can furnish that information.

444. Lord *Stanley.*] Are the Committee to understand that the 119 registered were either proprietors or tenants under long leases, principally of house property?—Yes.

445. Not agricultural tenants?—No, tenants of house property, held under long leases.

446. *Chairman.*] Were there many cases in that year of joint proprietors being put on in the same way as in the former year?—Yes, there were a number of cases of joint proprietors.

447. Mr. *Warburton.*] Are they classed among the 119?—Yes.

448. *Chairman.*] Do you consider any of those objectionable cases?—I did object to them before the Registration Courts.

[*The Witness was directed to withdraw.—The Witness was again called in.*

449. *Chairman.*] When you stated that they were individual votes, which you considered improper ones, did you doubt their being of the value of 10*l.*, or did you doubt the claimant having a proper title to them?—The claimant having a proper title; I did not speak to value at all.

450. All the other cases you considered improper, solely from a question of title, and not that of value?—The cases I speak of had no relation at all to value.

451. You stated, yesterday, that you considered all those cases of joint proprietorships cases of improper votes?—Improper, in so far as the price paid was not for the investment of money; and also from the situation of the party, and other circumstances which made me suppose that the object alone was having the right just to acquire the franchise.

452. Generally speaking, do you think the titles by which they acquired those properties were really good and *bonâ fide*, or did you think they were fictitious?—I thought many of them were fictitious; the titles, upon the face of them, appeared legally sufficient.

453. Were the persons who acquired those votes generally resident in the county?—Generally non-resident.

454. Did their being non-resident make it more difficult for you to discover whether their title was a good one or not?—It made it more difficult to support the objection, for I had not the local knowledge of the parties to enable me to judge from circumstances how to do it.

455. If they had been resident within the county you would have known more probably about their affairs?—Yes

456. Should you have known more about their circumstances?—Yes, I consider so.

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457. Should you have known better whether they were able to lay out the money for that property?—Yes.

458. Were those votes created for non-residents generally created by any particular agent?—Yes.

459. By whom were they generally created?—In 1834, by Mr. Horne and Mr. Rodger, and by myself; I wrote many titles.

460. Were they all created by the political agents of the parties?—Very nearly, if not altogether.

461. Mr. *Warburton.*] Did the observations you have made respecting what you consider improper votes apply to the votes of 1833, specified in your evidence of yesterday?—Yes.

462. *Chairman.*] Were those properties, generally speaking, a good investment of money if it had been a fictitious action?—No, I should say very bad.

463. Did those circumstances concur in making you look upon those votes as you have stated them, as improper, although you could not bring legal proof of their impropriety?—Yes.

464. Viscount *Stormont.*] Do you consider that more than one person purchasing property must of necessity make that purchase of a fictitious character?—No, I do not think so.

465. Mr. *Maule.*] Suppose that property were purchased at a price which by public advertisement it would not fetch, and a certain number of individuals immediately afterwards, at the earliest opportunity, enrolled as voters in the county upon that property, what character would you consider was attached to those votes?—I should consider them so far fictitious as that the enormous price was given for the purpose of acquiring a right to be put upon the roll of the county.

466. Sir *William Rae.*] Have you any other facts on which your opinion is founded different from those you stated yesterday?—In joint purchases, where the parties appear to have previously no natural connexion with each other, living in different parts of the country, and all belonging to one particular class of politics, the whole circumstances combined made me often think that the votes were not of a pure description, such as the holding property previous to those circumstances having taken place in the county.

467. Do you apply that to the case of the inn and the fields in the tenancies to which you referred yesterday?—I apply to both, to the case of the inn and the fields, the purchase of the parties all non-resident.

468. Sir *Hugh Campbell.*] You say there were a number of voters non-resident, and therefore you had much greater difficulty in lodging objections to their votes, and that you had difficulty in knowing whether their titles were good or bad; have you any means of knowing how far the titles of the persons for whom you are not concerned are good or bad?—I had the titles themselves at the court, and in a small county like Selkirk, I know pretty well the circumstances of the parties, and where they are not resident I cannot judge so well.

469. The circumstance of their not being resident you considered as creating a greater difficulty?—I do not see the title at the time of making the objection till after the objection is lodged; they are produced at the Registration Court.

470. You found your objection on what you imagine to be your own knowledge of the circumstances of the parties?—As regards title.

471. Mr. *Maule.*] That is the only means of an agent founding an objection?—There are no other means, because the party making the claim is not bound to produce them till he attends the Registration Court.

472. You generally objected in Selkirkshire on all the legal grounds you could imagine?—Yes.

473. Mr. *Warburton.*] There is no other mode of judging whether an objection is good or bad?—No; in an objection to any thing which may come out in respect of the title or value, we are precluded from being heard upon it, and the custom has been to state objections on all points.

474. Mr. *Maule.*] Do you know how many non-resident voters were put upon the roll in 1833?—Twenty-one proprietors.

475. Were there any other voters besides proprietors put on in 1833?—Yes, there were four tenants.

476. *Chairman.*] How many cases of joint proprietorships were there in 1834?—I have a note of fifteen different cases of joint proprietorships; there are two or three of those still persons on long leases which I have classed in that way.

477. Viscount *Stormont.*] Are you able to separate them; if so, have the goodness to do that?—I think there are four cases of long leases.

478. *Chairman.*]

478. *Chairman.*] Do all those come under the description you give of what you consider improper votes?—Improper, in so far as they are acquired by parties principally or nearly exclusively non-resident, and granted at the prices and under the same circumstances I described in a former year.

479. Will you describe the first case of that nature?—There are five joint proprietors on houses in Selkirk purchased from different people, and held by five gentlemen living in Edinburgh, five writers in Edinburgh.

480. Will you state their names?—Francis Anderson, writer to the signet; Henry Burn, writer to the signet; John Brown, writer to the signet; Walter Jolly, writer to the signet; Alexander Thomson, writer to the signet.

481. Was this purchase made solely, in your opinion, for a political purpose?—Yes, I think so.

482. Do you remember who was the agent of the transaction?—I think it was Mr. Horne.

483. Do you know the price that was paid?—No; there were a variety of purchases; two or three purchases; the deeds produced were taken in the first instance to Mr. Horne, and then Mr. Horne conveys to those five gentlemen.

484. Did you see the titles to Mr. Horne?—No, I do not think I did.

485. Do you know the price?—No, I do not recollect the price.

486. Lord *Stanley.*] The Committee understand you to say, that Mr. Horne in the first instance purchased this property, and then conveyed it to those five gentlemen jointly?—Yes; my impression is, that the title laid upon the table was just the disposition made by Mr. Horne to those gentlemen.

487. *Chairman.*] Was there any change of circumstances connected with those houses; was the occupation changed in any way?—In one of them partially changed; one of the properties adjoined the County Inn, and I think a part of it was taken into the County Inn.

488. In other respects, the subjects remained as they were before?—I think so.

489. Do you know any thing of any of those houses?—The rents proven were 55*l.*, according to my recollection.

490. Paid by the tenants?—Paid by a variety of tenants.

491. Paid to Mr. Horne?—There was no proof of that; I do not know who collected the rents.

492. It was proved that the tenants of those houses paid 55*l.* to the landlords who had possessed them before the sale?—No; one of the purchases was occupied by the gentleman who sold it, and he remained in possession of a part.

493. Sir *William Rae.*] Did he pay a rent for the part he possessed; was that part of the 55*l.*?—I cannot tell exactly how the rent was made up; but I was satisfied of the proof of value, that it exceeded 50*l.*; that it was something more than 50*l.*, and the five gentlemen were admitted.

494. *Lord Advocate.*] Had that gentleman, who continued to occupy, a lease?—I think the person who sold it is now on the roll, and is a life-rent proprietor of part of the same subject.

495. Viscount *Stormont.*] What is his name?—Cameron.

496. *Chairman.*] In your opinion, was that a good investment?—I do not know the price given for it.

497. Will you state the next case of joint property?—Three gentlemen living in Roxburghshire, two at Hawick, and the other having a farm near Hawick, purchased some land near the town of Selkirk and were enrolled upon it.

498. What were their names?—Robert Anderson and George Oliver, writers in Hawick, and John Oliver, junior, farmer of Stichley Hill.

499. Is there any thing particular in the situation or circumstances of those individuals whom you have mentioned?—Mr. Anderson and Mr. Oliver are writers in Hawick.

500. Are they agents for either party?—They are political agents in Roxburgh for the Tory party; John Oliver is a brother of George Oliver.

501. Whose tenant is John Oliver?—The Duke of Buccleuch's, I think.

502. Do you know any thing about the price given for this property?—I do not recollect the price; I have had a conversation with the gentleman who sold it, and he got, I think, rather more than double what it cost him.

503. Did he tell you the price he got for it?—Yes, I think he did.

504. Do you recollect what it was?—It was 68*l.* or 70*l.* an acre.

505. How many acres were there of it?—I do not know.

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506. Did he state that it was a high, a moderate or a low price?—He had bought it a few years ago at 28 *l.* an acre, and sold it at 68 *l.*

507. Did he tell you that he had got an extravagant price for it?—He seemed very well pleased with the price; he thought it a high price.

508. Who was the former proprietor?—Mr. John Anderson, of Selkirk, and Ebenezer Robson, of Hawick.

509. Viscount *Stormont.*] Is he father to Robert Anderson?—No, they are two parties; it was Mr. Anderson told me the price.

510. *Chairman.*] He told you the price had been paid him?—I think it is likely he did tell me that Mr. Anderson remained as tenant in possession of the part he had sold.

511. Did he get a lease from the parties to whom he had sold it?—Yes.

512. Mr. *Dunlop.*] Do you know what rent he paid per acre for this?—No, I do not.

513. *Chairman.*] Do you remember whether he told you the price had been paid him for that property?—My impression is, that he did tell me it had been paid.

514. Do you know who acted as the agent in that transaction?—I am not sure; I think Mr. Anderson, one of the purchasers, himself.

515. Who acted for the seller?—I am not aware.

516. Mr. *Buller.*] Is Mr. Anderson's son a political agent?—Mr. Anderson himself, one of the purchasers, is, in Hawick.

517. *Chairman.*] Is he any relation to the Mr. Anderson who sold the property?—No.

518. Sir *William Rae.*] Do you know the value of the part that belonged to Robson?—No.

519. You cannot tell the annual value of each?—No, I cannot tell the price of either.

520. What is it worth a year?—Twenty-six or twenty-seven pounds, I think, was the proof of value; perhaps that was Mr. Anderson's rent; I must have been satisfied of the proof of being more than 30 *l.* before they were all three put upon the roll.

521. Mr. *W. Campbell.*] How many acres was it?—I do not know; the proof of value must have been above 30 *l.*; I must have been satisfied of that, of course.

522. *Chairman.*] Will you mention the next case?—There was a case of two proprietors, a dwelling-house and stable, or dwelling-houses and stable, in the town of Selkirk.

523. Who were they?—James Jardine, Ashleton, and Elliot Armstrong, Richarby.

524. What are those two men?—They are farmers.

525. In Selkirkshire?—I know Ashleton lives in Roxburghshire, and I think Richarby does also.

526. Are they both out of Selkirkshire?—Yes.

527. Whose tenants are they?—Mr. Jardine is a tenant of the Duke of Buccleugh's, and I believe Armstrong is also.

528. Do you know the price paid for those properties?—No.

529. Do you know who acted as agent in the purchase?—Mr. Rodger, I believe.

530. Did he act for both parties?—I think so.

531. Sir *William Rae.*] Can you state the value?—The person who sold it took a lease back for two or three years at 22 *l.*

532. Viscount *Stormont.*] Who was the person who sold it?—Ballantine.

533. *Chairman.*] Did he continue to occupy the premises?—He occupies a stable, and the dwelling-house was let to tenants.

534. What is the value of the property?—I do not know the price.

535. Is 22 *l.* a fair rent for it?—Ballantine, who sold it, told me if he had not got the price he wanted, he would not have given so much; he would not have given so high a rent.

536. Did he tell you he gave a higher rent because he got a high price?—I think the words he used were, "If I had not got the price I did, I would not have given so high a rent."

537. Did that convey an impression to you that Mr. Ballantine did not think the premises worth 22 *l.* a year?—Yes.

538. Did he state that distinctly?—Yes, I think he did.

539. Viscount *Stormont.*] Is he still in occupation of those premises?—I think he is still in occupation of the stable.

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540. *Lord Advocate.*] Does he still continue to let the rest?—It was a short lease; I am not sure whether it continues at this moment; I think it does.

541. Viscount *Stormont.*] You cannot speak as to that fact?—It was a short lease, I recollect, two or three years, and my impression is, that Ballantine is still in possession of the stable, and that the other parts of the house are let to tenants.

542. Do you know the names?—There is a baker, I know.

543. *Chairman.*] Are the Committee to understand that he took the whole premises at 22 *l.* a year, and he sub-set a part of them?—Yes.

544. Do you know the price he got for that he sub-set?—No.

545. What is the next case you would refer to?—The farm of St. Helen's was sold by Miss Macdonald to six gentlemen.

546. They became joint proprietors?—Yes.

547. State who they were?—David Dundas, the younger, of Beechwood; Archibald Todd, residing in Liverpool; Archibald Hope, the younger, of Pinkie; Thomas Todd, of Dry Grange; William James Frazer, of Allerly; George Bailey, the younger, of Jerviswood.

548. Were any of those persons resident in the county?—No; Mr. Frazer was resident before.

549. Were either of them resident in the county at the time of the purchase?—No.

550. Have any of them been resident since?—Mr. Frazer is living in the county since.

551. Do you know any thing about the price paid for that property?—No, I do not.

552. Who acted as agent in it?—Mr. Horne, I think.

553. Who occupies that property now?—James Leach is tenant.

554. Was he tenant prior to that sale?—Yes.

555. What rent does he pay for it?—Sixty-four pounds a year, I believe.

556. Does he hold it under a lease?—Yes, I believe so.

557. A lease existing before this purchase?—Yes.

558. Did you see that lease?—I think so; because I inrolled the tenant as a voter; and I must either have had a certificate of the rent or seen the lease.

559. Was 64 *l.* the rent paid prior to that sale?—Yes, to the best of my impression.

560. There was no fresh lease granted at that time?—No.

561. Will you state the next case?—The next, according to my arrangement, is the lands of Shaws.

562. How many gentlemen became proprietors of that?—Five.

563. What were their names?—Sir Hugh Campbell; John Spottiswoode, of Spottiswoode; Lieutenant John Spottiswoode, Grenadier Guards; George Spottiswoode, of Gladswood; and Andrew Spottiswoode, Queen's Royal Lancers.

564. Are any of those gentlemen resident in the county?—No.

565. From whom were those lands purchased?—From Dr. Anderson.

566. How was this done; do you know who acted as agent in the transaction?—I think Mr. Rodger, but I am not sure.

567. Was it bought from Dr. Anderson himself?—No; it was through his brother; Dr. Anderson was a doctor in the army; I think at the time of the purchase he was residing in Ireland; he has a brother residing in Selkirk, and through him, I believe, the purchase was effected.

568. Did Dr. Anderson know at the time of the sale, that it was to be conveyed to those five gentlemen?—I have heard he did not.

569. Viscount *Stormont.*] You do not know that?—No, I do not.

570. *Chairman.*] What do you know about it?—I do not know any thing positive; just what I heard at the time.

571. From whom did you hear any thing on the subject?—I have heard Dr. Anderson, of Selkirk, talk of it, but I cannot charge my memory with what he said.

572. He has not told you any thing upon the subject of the circumstances connected with that sale?—I cannot charge my memory with what he said.

573. Sir *William Rae.*] You do not know either the price or value of the property?—I believe the price was 2,500 *l.*

574. Was it paid?—I do not know.

575. You never heard any thing upon that subject?—No.

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576. What is the annual value?—I do not know the rent precisely; it was proved beyond 50 *l.*?—Certainly.

577. *Chairman.*] What was the next case?—The next was the case of houses and some land in the neighbourhood of Selkirk, called Bythorn.

578. How many persons purchased that?—There were six inrolled in 1834.

579. What were their names?—Thomas Davidson, manufacturer, of Galashiels; Robert Weir, surgeon in Galashiels; William Weir, surgeon in Galashiels; Francis Inglis, manufacturer in Galashiels; John Inglis, manufacturer in Galashiels; and Robert Inglis, manufacturer in Galashiels.

580. From whom was that property purchased?—Mr. Clezy.

581. Where does he reside?—In Selkirk.

582. Who was the agent in that transaction?—I acted for those persons.

583. Was that property bought by you solely for political purposes?—Yes.

584. You stated that you considered that votes bought in this manner were improper votes; how came you to buy it then?—Votes under similar circumstances being put upon the roll, these gentlemen were anxious to become purchasers in the same way.

585. Still you considered them improper votes?—They would not have been bought but for the franchise.

586. Sir *William Rae.*] You considered it an improper vote where property was bought for the purpose of making one?—Where persons associated together who had no natural connexion in buying joint properties, I think that is a different case from people connected together choosing to do so.

587. *Chairman.*] If you considered it improper in the other party buying those votes, how came you to do it?—Just to support the party those gentlemen belong to, and to meet the votes made on the other side.

588. Do you mean that you did it by way of retaliation?—Yes.

589. Do you mean to say, that if the other party had not bought those votes you should not have bought these?—I certainly would not; I do not know what those gentlemen may have meant.

590. Did you act under their directions, or suggest to them the buying those votes?—I suggested it to them.

591. Did you take any pains to get them to buy them?—Yes; I asked them if a fair purchase could be got, whether they would take votes in the county of Selkirk, and they said they would.

592. Would they have done it if those votes had not been bought the preceding year by the other party?—No; I do not think that they would; I know their feeling was decidedly against purchases of that description in the county of Selkirk.

593. You say you suggested to those persons purchasing those votes; should you have made that suggestion or endeavoured to bring about that arrangement, if the other party had not done it?—No, I should not, but for similar proceedings the year before.

594. Are you positive of that?—Yes; that is my own feeling.

595. What was the price paid?—One thousand five hundred pounds.

596. Who is occupying the premises now?—Mr. Clezy.

597. The person who sold it to you?—Yes.

598. What rent does he pay for it?—Seventy pounds.

599. Was the purchase-money paid to Mr. Clezy?—It was.

600. Mr. *E. Buller.*] It was then a *bonâ fide* transaction; those parties paid the money and became entitled to the rents?—Those parties borrowed the money to enable them to pay it.

601. Do you know of whom they borrowed it?—Yes.

602. Of whom?—I negociated the transaction for them.

603. You furnished the money for them to buy the property?—Not my own money, money I borrowed for them.

604. You borrowed it of your client?—Yes.

605. Did this client receive for that money a good security from the parties who purchased that property?—They granted a joint bill for it; I have no doubt it is good.

606. You have no doubt of the security?—No.

607. In point of fact, it is a *bonâ fide* transaction?—Yes.

608. Sir *William Rae.*] Who was the creditor upon that bill?—Mr. Pringle.

609. Mr.

609. Mr. Pringle was the competing candidate for the county of Selkirk?—Yes.

610. One thousand five hundred pounds was borrowed of him through you?—Yes.

611. Mr. *Maule.*] Does he hold any security over the property?—No; he has the joint bill of the parties.

612. They pay interest, of course, upon that bill?—Yes.

613. Does the interest paid upon that bill amount to the rent of the property?—No, not so much.

614. Does it fall far short of it?—The rent of the property exceeds the interest by 10*l.*

615. Mr. *E. Buller.*] At what rate of interest was the money borrowed?—Four per cent.

616. Sir *Hugh Campbell.*] The interest has been paid?—Yes.

617. Mr. *E. Buller.*] Then, in point of fact, this was a good purchase?—I do not think it was very cheap.

618. Was it land or houses?—Principally houses.

619. *Chairman.*] Are those parties all resident in the county?—They are principally; they are all living in the town of Galashiels; part of the town is in the county and part out of it.

620. Sir *William Rae.*] They paid no part of the price at all except through this bill?—No.

621. Mr. *Maule.*] Is the rent of the property paid into their hands, or into Mr. Pringle's?—It is paid into their hands; I draw the rent and pay the interest to Mr. Pringle, and account to them for the balance.

622. Mr. *Divett.*] What is the rent?—Seventy pounds.

623. Mr. *Maule.*] Those transactions, undertaken by you and Mr. Pringle, were avowedly for political purposes?—Yes, I consider so.

624. Was that done before or after Mr. Pringle's opponents had been engaged in what you considered similar transactions?—It was done after the purchases by his opponents in 1833, and the year following.

625. Viscount *Stormont.*] How many claimed upon this property of Mr. Clezy's house?—Seven.

626. Be so good as to state the names of the persons?—The seventh was Mr. George Thomson.

627. How came he not to be registered?—I believe that he was not consulted in the purchase, and would not take up the property.

628. You, who acted as agent on this occasion, acted as agent for a man who had given you no directions whatever?—I did not act as Mr. Thomson's agent, I acted as agent for the six persons whom I had consulted.

629. You acted for six persons whom you had consulted, and purchased a property in which a seventh was interested, but whom you had not consulted?—Not personally; I was desired to make this purchase, and take the title in the name of Mr. Thomson, by Mr. Douglas; I had no personal communication with him.

630. What Mr. Douglas?—Mr. Douglas, of Old Melrose; I had no personal communication with Mr. Thomson on the subject.

631. The Rev. Mr. Thomson?—Yes.

632. At what time was it that Mr. Thomson declined having any thing to do with the purchase?—After a claim was lodged for him in the county of Selkirk.

633. How soon after?—Between that and the registration courts.

634. The vote was objected to?—Yes.

635. It was then that he refused to be examined, and never came before the registration court?—Yes.

636. He never defended his case?—No.

637. At that time did you ascertain the fact that those persons had paid the money for this property?—In Mr. Thomson's claim it was stated as his property.

638. Did he give you any directions to put in that claim?—No.

639. Did you make that claim?—Yes.

640. Under whose directions did you make that claim?—Holding the deed for Mr. Thomson, and knowing the object of the other parties in the purchase, I lodged a claim for him as well as the other parties.

641. Did any body direct you to do so?—I do not think I got any particular instructions as to lodging the claim.

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642. At that time had the 1,500*l.* been paid?—Yes.

643. Had a bill been granted?—Yes.

644. The bill was signed by six individuals?—Yes.

645. At that time you put in a claim for a man as one of the proprietors of an estate which you knew he had not purchased?—No, I did not know that at the time; I only knew it in the registration court.

646. Was not the bill signed only by six individuals?—Yes.

647. Therefore it was the six who paid the money, and not the seventh?—Yes.

648. Therefore, the money was paid by the six, and not by the claimant?—At the time the money was got, I considered I was procuring it for the whole seven, and I got the bill, shortly after the transaction, signed by the six parties; it was not signed by Mr. Thomson; and the matter stood in that way at the time of lodging the claim, and I lodged the claim for the whole seven.

649. Mr. *Maule.*] Any one of those signatures would have been sufficient to guarantee the money?—Several of them would have been quite enough.

650. Viscount *Stormont.*] When was the money paid to Mr. Clezy?—It was paid at the time of taking the disposition from him.

651. What was the date of the bill signed by the six?—I think just the date of the disposition itself.

652. *Chairman.*] At the time you put in Mr. Thomson's claim for registration, he held a title to a part of that property?—Yes, the disposition covered his title.

653. Though he individually had not paid for a share of it?—Yes.

654. Are all those seven gentlemen keen political partisans?—I considered them all belonging to the liberal party.

655. Is Mr. Thomson also a very decided adherent to the liberal party?—Yes, he is.

656. You state that you made these votes in consequence of votes made by the opposite party?—Yes.

657. And you took for granted that those parties who were your political adherents would enter into this plan?—I knew the six, and I believed that the seventh would. I never doubted it.

658. Therefore, expecting he would do it for the sake of his party, you inserted his name?—It was through Mr. Douglas I received my instructions.

659. *Lord Advocate.*] Did you consider Mr. Douglas authorized so to instruct you?—I thought so at the time.

660. Lord *Stanley.*] What reason have you for stating that?—Mr. Douglas was the person on whom I relied; I thought he knew the fact.

661. Is Mr. Douglas a relation of Mr. Thomson's?—No; he lives in his neighbourhood.

662. Lord *Stanley.*] Are you in the habit of purchasing on the authority of persons not relations of the party, on their merely signifying that they have authority to direct you?—I had directions in that case to make the purchase. I conceived he had authority, and, relying upon that, I made the purchase.

663. Mr. *Maule.*] You knew it was a scheme to make the qualifications in question, and you considered the parties desirous of forwarding that plan?—Yes.

664. It is a wholesale way of making votes?—Yes, I believe it has been done.

665. Sir *Hugh Campbell.*] What Mr. Thomson is this?—A son of the minister of Melrose.

666. Where is he residing?—In Edinburgh now.

667. He is not residing in Selkirk?—No.

668. Sir *William Rae.*] How was it arranged that they should borrow this money?—It was stated that it was not convenient for them to advance the money, but that if they could get a loan of it, they would enter into the transaction.

669. Was it said by you that Mr. Pringle, the candidate, would enable them to make the purchase?—I believe Mr. Pringle's name was not used; but I told them I would procure them the money to make the purchase.

670. *Chairman.*] Do you know that it is common for the agents of both parties to find persons to take votes in this manner?—I believe it is quite common.

671. Mr. *Maule.*] Did you ever find a difficulty in procuring parties when you had arranged a transaction of this kind?—No.

672. *Chairman.*] Are these transactions very often conducted not in a very regular manner, for the sake of acquiring a title to the franchise?—Yes, I believe they are.

673. You

673. You know that system is very general?—Yes.

674. Sir *Hugh Campbell.*] You know that of your own personal knowledge?—Yes.

675. Sir *William Rae.*] Can you state any instance in which Mr. Pringle, of White Bank, lent money to a man to purchase a vote?—I am not aware of any such case.

676. Mr. *Maule.*] You are not aware of any of the pecuniary transactions of Mr. Pringle, of White Bank?—No, I do not know any thing about Mr. Pringle's pecuniary transactions.

677. *Chairman.*] Do you know many cases of persons put on by the other party, in instances in which they could not have paid the money themselves?—Yes, from my knowledge of the parties I believe there are such persons.

678. Lord *Stanley.*] You are prepared to specify the parties?—I should not wish to name the parties.

679. *Chairman.*] Do you know in any instances of persons having been put on the roll as joint proprietors by the agent for the opposite party, that they were not in circumstances to have paid the purchase-money themselves?—I think there are such cases.

680. On consideration, can you say that you know there are such cases?—I believe I could point out cases; but I think, for the sake of the parties, I am not entitled to do so.

681. Lord *Stanley.*] Why do you think you are not at liberty to do so?—That it would be injurious to their credit, perhaps.

682. Do you mean to say that you know of such cases, which you would be able to verify upon your oath as of your own knowledge, but which you do not state, only because it would be injurious to the parties?—I consider there are such cases; I would make the same statement upon oath, that I consider there are such cases.

683. Do you know that there are such cases, and would you be prepared to state it upon your oath, but that you decline stating it, on the ground of the injury it would do to the individuals?—It is impossible for me to be minutely acquainted with the whole subjects of place and neighbourhood; I would not swear they might not be in possession of means I am not aware of.

684. You were asked whether there were other cases of a similar character, and you said there were, but that you were not entitled to state them, as that might be injurious to individuals; can you at this moment present to your mind a single case in which to your own knowledge that circumstance has taken place, but which you decline stating, on the ground of the injury which might be done to the individual?—I think there are such parties.

685. *Chairman.*] Can you swear that there are such parties?—In so far as my belief went; I would not swear that the people were not able to pay for them; there may be circumstances not coming within my knowledge.

686. It may be very possible for you to have a conviction amounting to positive certainty, that a person is not worth 200*l.*, though you cannot swear it?—Yes; I have no hesitation in saying it is my own decided feeling that that is the case, from my knowledge of the circumstances of the parties.

[*The Witness was directed to withdraw.—The Witness was again called in.*

687. You stated, in answer to a question put to you, that you could not swear you knew any parties on the roll that had not paid money?—No.

688. Why cannot you swear it?—Because I do not think it would be proper to the parties; it might be injurious to their credit, and perhaps bring me into difficulties.

689. Could you know that any person was not worth 200 *l.* unless it was a person with all whose pecuniary affairs you were intimately acquainted?—I certainly do know such people.

690. Could you swear that any person with whose pecuniary affairs you were not intimately acquainted, was not worth 200*l.*?—No, I could not swear that.

691. Mr. *Divett.*] What are the grounds of your belief that there are individuals on the roll who have those qualifications, without having the means of paying for them?—From living immediately beside them; and in country places we know pretty nearly generally the circumstances of our neighbours, and judging from the circumstances that ten or twelve years' acquaintance gives me, I

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should say there were many of those who were not out of their own funds able to pay for the property.

692. You judge, from their appearance, circumstances and station in life?—Yes.

693. Have you observed this in few instances or many?—I think there are a good many instances.

694. What number are there on the existing roll, of whom you have such an impression?—I should say fifteen or twenty perhaps; I should require to look over the roll and form my opinion upon it.

695. *Chairman.*] That is a mere random statement?—Yes.

696. Mr. *Ferguson.*] So that you are not prepared to state the names of any of them?—No.

697. Viscount *Stormont.*] In the succeeding year, was the name of Mr. Thomson filled up?—Yes.

698. By whom?—By Mr. Henderson.

699. Was he registered the following year on the seventh part of Clezy's land?—He was, in 1836.

700. Will you state the circumstances under which he acquired that property?—By Mr. Thomson conveying his seventh part of the subject, with the consent of Mr. Clezy, who was the original proprietor; the disposition was granted, I think, by Mr. Thomson, with the consent of Mr. Clezy, to Mr. Henderson.

701. Had Mr. Thomson received the conveyance?—No, but the disposition by Mr. Clezy in favour of the whole parties, bearing Mr. Thomson's name upon the face of it; there was no way of making the title clear, but Mr. Thomson carrying on the progress with the consent of the original seller to Mr. Henderson.

702. *Chairman.*] Do you say Mr. Thomson did not receive the disposition?—He had received a disposition, inasmuch as he was in it.

703. Lord *Stanley.*] Mr. Thomson had never received the conveyance, nor borrowed the money?—No.

704. *Chairman.*] The disposition was made over to Mr. Thomson, though he had never paid the price for it?—Just so.

705. Viscount *Stormont.*] Then, in point of fact, the six individuals paid the money for the whole seven parts?—Yes; the only security Mr. Pringle took for his money was the security of these six parties, till Mr. Henderson acquired that right, and then he signed the bill.

706. Mr. *Ferguson.*] Was Mr. Pringle aware of the first borrowing of the money?—Yes.

707. He was candidate for the county?—Yes.

708. Sir *Hugh Campbell.*] Did Mr. Pringle pay the money himself?—I think I got an order upon his banker at Edinburgh.

709. Viscount *Stormont.*] You put in the name of Mr. Thomson, with the knowledge that no part of the money which had been paid was paid by him?—Yes, I lodged the claim for him under that knowledge.

710. Did you not consider it fictitious to put in the name of a man for a property for which he had never given any instructions?—I was not aware at the time of putting in the claim that Mr. Thomson had not purchased; I was only aware between the lodging the claim and the registration court, that he had not made the purchase; I was aware of it only after the objections.

711. You were aware he had not paid any part of the money?—Yes.

712. Mr. *Maule.*] Might it not be possible he had paid it to one of the other six without putting his name to the bill?—That might have been possible; I had no communication with him.

713. *Chairman.*] Might he not have promised them that he would add his name to the bill?—That is possible.

714. Viscount *Stormont.*] Did he?—I do not know.

715. Did he ever state that he had?—To this moment I have had no personal communication with Mr. Thomson upon the subject.

716. You stated that Mr. Thomson conveyed this property to Mr. Henderson; did Mr. Henderson pay any price for it?—Mr. Henderson gave a bill.

717. He paid no price to Mr. Thomson?—No, Mr. Thomson had not advanced any part of the price, and he conveyed over the share with consent of Mr. Clezy.

718. Mr. *Dunlop.*] In fact, Mr. Henderson merely became one of the purchasers from Mr. Clezy, in the place of Mr. Thomson?—Yes.

719. *Chairman.*]

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719. *Chairman.*] What was the nature of the conveyance by which Mr. Henderson acquired his title?—It was a joint disposition by Mr. Clezy, the original seller, and by Mr. Thomson, who had declined to make the purchase.

720. What became of the original disposition to the seven individuals?—That stood as it was.

721. What was the next case of joint proprietorship that year?—A field near Selkirk.

722. How many joint proprietors were there?—There were three joint proprietors.

723. What is the name of the field?—I do not think it has any particular name.

724. Who are the three individuals?—John Murray of Uplaw, Andrew Murray, junior, advocate, and Alexander Kay of Charlesfield.

725. Who was the agent in this transaction?—I was.

726. What was the price paid for that property?—Within a few pounds of 800 *l.*

727. By whom is it at present occupied?—Thomas Scott.

728. Was he the original proprietor?—He was.

729. He now retains it as tenant?—Yes, under a lease for twelve years.

730. What rent does he pay?—Thirty pounds.

731. Was this money paid?—Yes.

732. The whole of it?—The whole of it was paid to Scott, the seller.

733. Was it paid by you?—It was.

734. Viscount *Stormont.*] At the time of the purchase?—At the time of the disposition.

735. *Chairman.*] Was this money raised in the same way as in the last purchase you mentioned?—No; the Messrs. Murray paid their own purchase in cash; they paid it through Mr. Douglas; he brought it to me.

736. What Mr. Douglas is that?—Of Old Melrose; he is brother-in-law to Mr. Pringle; the whole cash was given to me.

737. Sir *William Rae.*] You got the whole money from Mr. Douglas, brother-in-law to Mr. Pringle of Clifton?—Yes; I had occasion afterwards to learn that Mr. Douglas had taken a bill from Mr. Kaye, but I do not know whether it is his portion of the purchase-money, or part of it; I did not know it at the time the money was given to me, and I handed it over to Mr. Scott.

738. Did you know that the two Mr. Murrays paid their proportions of their money to Mr. Douglas, or what they paid it for?—They paid their own shares; Mr. Douglas told me so.

739. Viscount *Stormont.*] Was that the same Mr. Douglas that authorized you to purchase this property for Mr. Thompson?—Yes.

740. *Chairman.*] Mr. Douglas, you say, had taken a bill from Mr. Kaye; how did you learn that?—I learned that afterwards; I had it in my own possession after Mr. Kaye accepted it; I think I ultimately gave it back to Mr. Douglas himself.

741. Viscount *Stormont.*] For what sum was the bill?—It was upwards of 200*l.*; between 200*l.* and 300*l.*

742. Was it for a third part of the 800*l.*?—My impression is that it was, but I do not recollect the precise sum.

743. You saw the bill yourself?—Yes.

744. *Chairman.*] At that time Mr. Douglas told you the other two parties had paid the money?—Yes.

745. Sir *William Rae.*] The seller remains in possession of the property as tenant?—Yes.

746. When was the lease granted?—Immediately after the purchase.

747. Thirty-pounds was the rent fixed?—Yes, for the twelve years.

748. Is that the fair value of the property in your opinion?—I believe so; I do not know much about it myself.

749. Are any of those gentlemen resident in the county of Selkirk?—None.

750. *Chairman.*] Is there any other case of a joint proprietorship of that kind?—There were some parks near Selkirk (I do not think they have any particular name) acquired by three proprietors.

751. Who are those three?—James Elliot, of Wolflie; Archibald Jardine, of Bongerard; and William Rutherford, writer in Jedburgh.

752. Are any of those gentlemen resident in the county?—No.

753. Who was the agent in this transaction?—I was.

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754. Was this property acquired solely for the purpose of the vote?—I believe the object of the parties purchasing was solely to acquire the franchise.

755. What was the price given for the property?—A few pounds beyond 800 *l.*

756. From whom was it bought?—William Mabon.

757. Who occupies it at present?—It was grass parks; it has been let every year by public roup since that.

758. Do you know what is got for them?—Yes, this year, I think, 37 *l.*

759. Did those gentlemen pay the price?—The price, I think, was given to me in the same way as the last, by Mr. Douglas.

760. Do you know whether it was paid by him or not, or how it was raised?—No, I have no knowledge.

761. He gave it to you in cash?—Yes.

762. Did he state to you, either that he had received the money from the parties, or that he had received bills for it?—I am not positive; I think Mr. Elliott paid his third, and that bills were taken for the other two thirds.

763. Did you get those bills?—Yes, I think I have seen the bill applicable to that; I have seen a bill from those gentlemen to Mr. Douglas, and I think it is applicable to that case.

764. Viscount *Stormont.*] In what walk of life is Mr. Jardine of Bongerard?—He is a proprietor in the county.

765. What is Mr. Rutherford?—He is a writer in Jedburgh.

766. *Chairman.*] Is Mr. Rutherford connected with your political party?—Yes, he is, in Jedburgh.

767. All those persons acquired their property solely for political purposes?—Yes.

768. Sir *William Rae.*] Can you explain how a proprietor of considerable property in that county, Mr. Rutherford, a man of substance, found it necessary to give that bill for that small sum?—No, I consider them in circumstances both to be perfectly able to pay; but I cannot state the reason for the bill being given.

769. Lord *Stanley.*] You cannot guess the reason?—I had no personal communication with them upon the subject.

770. *Chairman.*] Did you consider this transaction a fictitious transaction for the sake of acquiring the franchise?—I considered the transaction was one exclusively for the sake of securing the franchise.

771. Did you conceive it to be a fictitious transaction?—No, I have no notion of that.

772. Mr. *E. Buller.*] You consider it worth the money?—Yes, I considered that as an investment it was cheap; it is letting now, to give four and a half per cent. for land.

773. Sir *William Rae.*] Do you receive the rent?—Yes.

774. To whom do you pay it?—I pay it to the parties who purchased it; I have paid Mr. Elliott separately his; and I have an account between Mr. Rutherford and myself, in which I credit him for his share of the profits.

775. Mr. *E. Buller.*] You stated that two of the parties gave bills to Mr. Douglas; do you pay interest upon those bills?—No, I have never paid any interest upon those bills.

776. Are you the proper person to do it?—No; I have no charge of the bills at all.

777. Had you any directions from the owners of this property to pay the interest due upon those bills?—No.

778. Mr. *Divett.*] When you say bills, do you mean what are properly called bills or bonds?—Promissory notes.

779. *Chairman.*] Was it at sight?—Yes, I think it was.

780. *Lord Advocate.*] Do you say you paid the other two portions of this to Mr. Rutherford?—I paid Mr. Elliott his proportion, and I have an account with Mr. Rutherford, where I credit him for both the other shares; I have no separate account for Jardine.

781. Viscount *Stormont.*] Are you Mr. Rutherford's private agent?—I do matters for him in the county of Selkirk, and he does writer's matters for me in the county of Roxburgh.

782. *Chairman.*] Will you state the next case?—There are two gentlemen of the name of Scott, who bought houses in Selkirk.

783. A joint purchase?—Yes.

784. What

784. What are they?—They are farmers.
785. Whose tenants are they?—Lord Douglas's, I think.
786. In what county?—Roxburghshire.
787. They are not resident in Selkirkshire?—It is in the county of Roxburgh; Thomas Scott and John Scott.
788. From whom was this bought?—I think there were two different properties; one bought from a Miss Buchan, and the other I do not know whom.
789. Do you know the price given?—Not exactly.
790. Did you see the disposition?—Yes.
791. Did the disposition state the price?—Yes, it did.
792. But you do not recollect what it was?—I do not.
793. Who occupies the premises now?—Miss Buchan continues to occupy the premises she sold.
794. The seller now occupies them as tenant?—Yes.
795. Do you know the rent she pays?—No.
796. Who was the agent in the transaction?—Mr. Rodger, I believe.
797. Sir *William Rae.*] Was the price paid?—I do not know.
798. Are those men considerable farmers?—I have understood so.
799. You do not know the value of the property?—No, I do not.
800. Do you know what sort of rent those gentlemen, Messrs. Scott, pay?—No, I do not.
801. *Chairman.*] Were there any other cases of joint proprietors that year?—There are two gentlemen of the name of Douglas, writers in Edinburgh, who bought some property in Selkirk.
802. From whom did they purchase it?—From Mr. Robertson.
803. Who was the agent in that transaction?—I think Mr. Rodger was agent in the purchase, but that Messrs. Douglas prepared the conveyance themselves.
804. Do you mean that Mr. Rodger acted as agent for the seller, but Messrs. Douglas for the purchasers?—I think Mr. Rodger made the purchase, but that the deeds were prepared by themselves.
805. What reason have you for believing that Mr. Rodger made the purchase?—I think Mr. Robertson told me so himself, that he negociated it with Mr. Rodger.
806. Sir *William Rae.*] Do you know the price or the value of it?—I do not know the price; the value must have been proven to have exceeded 20*l.* a year.
807. Who occupies those houses now?—There are a variety of tenants.
808. Has the occupation been changed?—Yes; I think previous to the purchase Mr. Robertson occupied a part, and that he has now left Selkirk.
809. Has any change taken place in the rent since the purchase?—I do not know.
810. Were those Douglases father and son?—Yes, they were.

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Jovis, 23° die Februarii, 1837.

MEMBERS PRESENT.

Sir William Rae.	Mr. W. Campbell.
Mr. Bingham Baring.	Mr. Warburton.
Mr. Divett.	The Lord Advocate.
Lord Stanley.	Sir Hugh Campbell.
Mr. E. Buller.	Sir Thomas Fremantle.
Mr. Dunlop.	Viscount Stormont.

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. *Robert Haldane*, again called in; and further Examined.

811. *Chairman.*] WERE there any cases of life-rents put on in the year 1834?—There were.
812. How many were there?—Ten.

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813. Were those single or joint life-rents?—They were both.

814. Were they acquired in the same manner as the life-rent the preceding year, by disposition?—Yes.

815. Were they acquired by purchase or by grant?—There were both; I think there were two deeds of life-rent.

816. State first the cases of joint life-rents?—There were two purchased by John Grainger, factor to the Marquis of Lothian; and John Mair Grainger, his son.

817. Those individuals purchased a joint life-rent?—The father is also fiar of the property, but he is inrolled as life-renter.

818. From whom did they purchase it?—The trustees of Andrew Henderson.

819. Do you know the price that was paid?—The price was 840 *l.*; the deed taken to the father both in life-rent, and in fee, and to the son in life-rent by a new deed.

820. Who was agent in that transaction?—Mr. Horne.

821. Do you know whether the price was paid?—I do not know.

822. Do you know the value of the sub-set?—It had been previously let for 21 *l.* a year.

823. Are those two persons resident in the county?—No.

824. Lord *Stanley.*] Of what did the property consist?—Of land; a park.

825. Was the same tenant retained upon it?—Yes.

826. *Chairman.*] Was that an usual way of making a purchase, for the father to possess the fee, and the son the life-rent?—No, I do not think it was usual.

827. What was the next case of joint life-rent?—The case of four joint life-rents.

828. Upon what property?—On lands near Selkirk.

829. Was it a joint purchase?—No, it was life-rents granted by the proprietor of the land.

830. Was that purchased, or how acquired?—It was purchased by the four individuals.

831. From whom was that purchased?—From Mr. Douglas; he was the granter of the life-rents.

832. What Mr. Douglas?—Of old Melrose.

833. The gentleman of whom you spoke on a former day?—Yes.

834. Was he the proprietor of the subjects before?—Yes; he bought them a short time before.

835. Sir *William Rae.*] How long before?—A few months, I should say.

836. *Chairman.*] Who was the agent in that transaction?—I was.

837. What was the price that was given by those four gentlemen for whom you acted as agent?—I do not recollect the price; it was fixed according to their ages.

838. By the tables of annuities?—Yes.

839. Do you recollect what was each person's share?—Each of them had a fifth part; there was a fifth inrolled in the year following.

840. Lord *Stanley.*] With his own consent, or like the case yesterday, without that?—There were five claims in 1834, and one of them was given up; the gentleman not wishing to have a life-rent vote.

841. Just the same case as the Committee had yesterday of a seventh gentleman put on without his knowledge?—I believe it was; it is not exactly within my knowledge, as I did not come in contact with the party.

842. *Chairman.*] Did Mr. Douglas grant a disposition to those gentlemen?—Yes.

843. To how many was the disposition granted?—To five.

844. State the names of the five?—Sir Thomas Brisbane, Colonel O'Reilly, John Tulloh, of Arthurshiel, the Rev. Patrick Bradley, of Lilliesleaf, and the fifth was Captain Wybergh.

845. The disposition was granted to those five gentlemen?—There was a separate disposition to each of those.

846. How was it a joint purchase, if each had a separate disposition?—There were five deeds granted by one person; but the people acquiring the right had no connexion with each other.

847. Mr.

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847. Mr. *Warburton.*] Are they joint tenants of the same property now, or does each hold a separate property?—Each holds a fifth.

848. Sir *William Rae.*] Was that fifth described in the deed as a particular part of the land?—No, one fifth of the whole land.

849. *Chairman.*] A disposition of the fifth of the whole land was given to each of those gentlemen?—Yes.

850. And four of those were inrolled upon them?—Yes.

851. What was the reason the fifth was not inrolled?—It was held by Captain Wybergh, and he did not wish to qualify upon the right, and his claim was not insisted upon in the Registration Court.

852. Who was the fifth gentleman?—Captain Wybergh.

853. Did you make out a disposition to Captain Wybergh?—Yes.

854. Lord *Stanley.*] Mr. Douglas purchased the property, and sold the life-rents?—Yes.

855. To whom did he sell them?—It was by his own desire I prepared the deeds; it was to those parties I have named.

856. Those parties were all consenting to make the purchase when this gentleman sold to them?—I had my instructions only from Mr. Douglas; I had no instructions from the parties.

857. Do you mean to state, that as in the case of yesterday you drew a deed of sale from one party to two, and took your instructions from the seller without any instructions from the purchasers?—Yes, I had no communication with the purchasers of the life-rents.

858. At the time you entered those five gentlemen as having purchased this life-rent, were you aware that any one of them had consented to become such purchaser?—No; my instructions were exclusively from Mr. Douglas.

859. You had no knowledge whatever that either of those parties had consented to become the purchaser?—No, I knew nothing about it at the time of preparing the deeds, but from Mr. Douglas's orders.

860. Who became responsible for the purchase-money to Mr. Douglas?—The deeds were so framed that the parties were responsible for the purchase-money.

861. Could any such responsibility attach upon the parties without their having signed the deed?—Not by granting the deed, certainly.

862. Who was responsible for the purchase-money of those undivided fifths?—The terms of the deed showed it was the purchasers themselves; the life-renters did not sign it.

863. Till they accepted it they were not responsible?—No.

864. Did any body actually pay the purchase-money?—Not to me.

865. Did any body actually pay the purchase-money to Mr. Douglas?—I have had in my possession bills granted by three of the parties to Mr. Douglas for the purchase-money.

866. Which are those?—Mr. Bradley, Mr. Tulloh and the gentleman who ultimately got the fifth, that Captain Wybergh did not take.

867. What was the name of that gentleman?—Captain Russell Elliott.

868. Of the five original purchasers two only gave bills?—So far as I know.

869. Who paid the purchase-money?—I do not know; I had no communication with any of the parties.

870. You were agent for the transaction?—Agent for preparing the deeds by Mr. Douglas's order.

871. You were not responsible in any degree for the purchase-money?—No.

872. Did you see the deed executed?—I think I must.

873. Was any money paid at the time of the execution of the deed?—No, it was granted by Mr. Douglas.

874. Did you put the claim upon the register?—Yes, I put in claims for the five parties.

875. When you put them on, to the best of your knowledge, you were not aware of any purchase-money having been paid by any; and you were aware only of bills having been given by two out of the five?—Yes.

876. And you had no authority from any of the five to put their names upon the register, or reason to suppose, except from what Mr. Douglas told you, that they

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they were parties to the transaction?—Yes, I had authority from the four that were put upon the roll.

877. What authority?—A written mandate to put them on the roll.

878. Captain Wybergh declined?—Yes; I never had an authority from him.

879. Sir *William Rae.*] You had not authority to present a claim for Captain Wybergh?—No.

880. Was he inrolled?—He was not.

881. *Chairman.*] Are you to be understood that Captain Wybergh declined?—Yes.

882. How did he decline?—I do not know myself personally; but Mr. Douglas intimated to me, before the case came on for discussion in the Registration Court, that he had declined, and the claim was not insisted on.

883. You withdrew the claim in consequence of that?—Yes.

884. Sir *William Rae.*] Are you certain that Captain Wybergh was not inrolled by the sheriff in the first instance?—Yes.

885. *Chairman.*] You were asked whether those persons could be responsible for the purchase-money till they accepted; what is the form of a disposition of that kind?—It is granted on the narrative of the disponer, Mr. Douglas, having sold, in consideration of a certain price, a fifth part of those subjects.

886. What is the manner in which that deed is executed?—By Mr. Douglas signing it.

887. Is the signing sufficient for the completing of the transaction?—Yes, that completes the execution.

888. Is delivery necessary?—Yes, acceptance of the deed is necessary.

889. Is delivery by the purchaser to the seller necessary or is it not?—I consider a person not bound by the deed of another till he accepts it.

890. To make it a legal transaction is it necessary that the disposition should be delivered by the seller to the purchaser?—Yes, I conceive so.

891. How does that deed bear that the subjects are disponed upon the fulfilment of certain conditions, such as the payment of the price?—It appears in consideration of a price mentioned on the face of the deed that the sellers dispone, and the deed contains certain clauses.

892. Mr. *W. Campbell.*] As a conveyancer, do you feel yourself bound to prepare any deeds you may be ordered to draw, if you are directed by clients?—Yes.

893. When you had drawn those deeds, all you have to do is to follow his directions, and then look to him for the remuneration for the professional trouble you have been at?—Certainly.

894. It is no question of yours whether the parties in whose favour that is drawn accept it or not?—No.

895. Your business is simply to obey the directions your client gives you to draw certain deeds?—Yes.

896. And those become legal, in the estimation of the Scotch Courts, when they are accepted, and paid for by the persons in whose favour they are drawn?—Yes.

897. Mr. *Warburton.*] The acceptance of the bill, whether the sum of money stated in the bill be paid or not, would be considered as binding the contract, would it not?—No doubt.

898. Mr. *B. Baring.*] Is the receipt of the consideration entered upon the face of the deed?—Yes, it bears it upon the face of it.

899. Is it necessary that the receipt of the consideration money be entered to constitute a valid instrument?—It is necessary to insert on the face of the deed the true price.

900. And that that true price has been received?—Yes.

901. In those four cases you have mentioned, did you enter the receipt of the consideration money?—That is invariably done in the framing all Scotch deeds.

902. On those four deeds you entered that the money had been received?—I have no doubt I did; it was the usual style.

903. You have no doubt you did so enter it?—None at all.

904. Mr. *Warburton.*] In the case of a bill, and not money, being paid, is it stated

stated in the deed that it is paid by bill and not by money?—The terms of the deed, whether it is settled by bill or bond or cash, are precisely the same.

905. The bill or bond is not mentioned in the deed?—Never.

906. Lord *Stanley.*] But it is entered on the deed that the consideration has been paid?—Yes, invariably.

907. Sir *Thomas Fremantle.*] Does the seller sign the receipt separately from the general execution of the deed?—No.

908. There is only one signature?—Yes, the granter.

909. There is no indorsement reciting the payment of the money?—No.

910. Some of the bills are in your possession?—They were in my possession.

911. When did they come into your possession?—Several years ago.

912. Cannot you state the year in which they came into your possession?—I think it must have been shortly after the granting of the deeds.

913. Were they several dispositions to each party separately, or one disposition?—Several dispositions.

914. How long after the granting the deeds was it that any bills came into your possession?—I cannot state, precisely.

915. Was it many months or a twelvemonth?—I think some months, perhaps.

916. Did the parties who gave bills, give bills for the whole amount of the purchase, or only a part?—The whole amount.

917. From whom did you receive those bills?—I wrote the bills to be signed by all the parties, each for their own sum, and gave them to Mr. Douglas to get signed, he being the creditor in the transaction; and I think he returned to me, to keep for him, two of the bills, some months afterwards.

918. How soon after you wrote these bills were they so returned to you?—I cannot state precisely; a few months, perhaps.

919. Were those bills delivered to you before the registration in the Sheriff's Court?—I think they were.

920. So far as you know, at the time Mr. Douglas executed the conveyance, those bills were not drawn or signed by the parties?—They were drawn after the conveyance was executed.

921. Mr. *Warburton.*] After the execution by Mr. Douglas?—Yes.

922. Mr. *W. Campbell.*] Does the same person who held the land previous to Mr. Douglas's purchase, hold it now?—Yes.

923. As tenant?—Yes.

924. What is his rent?—Within a few shillings of 60*l.*

925. Mr. *E. Buller.*] Though you do not recollect the exact price paid by those parties, do you recollect whether it was a full compensation for the annuity purchased?—Yes.

926. Sir *William Rae.*] Had you the dispositions in your hands at the time you made a claim for registration?—Yes.

927. Who put them into your hands?—Mr. Douglas, I think.

928. He put into your hands the dispositions on which the claims of the life-renters were to be made, and not the parties themselves?—Yes.

929. Ought not those dispositions to have been in the hands of the life-renters?—I believe they were, but they were brought back to me by Mr. Douglas.

930. Do you know that they were given first to the parties, and that they gave them back to Mr. Douglas?—When Mr. Douglas executed the former deeds, he took them away for the purpose of delivering them to the parties.

931. Do you know that he delivered them to the parties?—I cannot say; I have had no communication with the parties.

932. What directions did Mr. Douglas give you?—He returned them to me, for the purpose of getting the parties inrolled as life-renters.

933. The instructions to get them inrolled came from Mr. Douglas?—Yes, I had separate mandates for inrolling them, from each of the parties.

934. *Chairman.*] Was each mandate signed by the individual life-renter?—Yes, not from the fifth; I had no authority from him.

935. Sir *William Rae.*] You made a claim for him without having such authority?—Yes, I lodged a claim for him, not having authority at the time.

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936. Mr. *Warburton.*] Have you any doubt that the object of these transactions last alluded to was for the purpose of obtaining votes for the county?—None.

937. Lord *Stanley.*] Do you consider this to be a *bonâ fide* or a colourable transaction?—I believe the purchase was made by the parties *bonâ fide*, to acquire a vote.

938. You believe that they made a *bonâ fide* purchase, the consideration being paid, and the subject substantially as well as technically passing into their hands?—I believe that they purchased the rights.

939. Do you believe that they did derive the benefit of their purchase, and that they had a substantial and a real interest?—I know nothing to the contrary.

940. Do you believe they did?—I certainly believe it; I do not know anything to make me doubt it.

941. You mean to tell the Committee, you do not think this was a colourable transaction?—I think the transaction alone was gone into by these parties; the right acquired, and the price stipulated to be paid to give them a right to vote under the Reform Act.

942. Your evidence being adduced with the object of showing that there had been colourable purchases to acquire the right in Scotland, do you consider that this was a colourable transaction?—I think it colourable myself.

943. Mr. *Warburton.*] Can the deed be set aside, in case the bills given were not paid?—No.

944. By no proceeding in the Scotch courts could that deed be set aside, on the ground of the non-payment of the bills given?—No.

945. Mr. *E. Buller.*] Could the holder of the bills take possession of the rents?—He might attach the rents by different processes, but not affect the disposition.

946. *Lord Advocate.*] Could he attach those rents more than any other subjects?—No.

947. Sir *William Rae.*] No money passed to your knowledge?—No, not to my knowledge.

948. Who occupies the fields?—John Fairburn.

949. At what rent?—Something under 60 *l.*

950. And that is divided among those five persons?—I believe so; I have drawn one year's rent.

951. Did not you have the rent?—I have drawn, I think, one year's rent, perhaps two.

952. What did you do with that money?—I entered it in my ledger in an account to the life-rent proprietor over the land.

953. The money is still in your hands, is it?—Yes, it is.

954. Did you make any account of it to Mr. Douglas?—No, I think I made an account of it to nobody; that I have the money still in my hands.

955. No part of the money has been paid to any one of those individuals?—No.

956. Mr. *Warburton.*] Has any application been made by any of those parties for his part?—Yes, one of them.

957. Who is that?—Mr. Tulloh.

958. Have you paid it?—No.

959. Why?—I met him at Selkirk one day accidentally; I told him that if he was coming by Galashiels, and would call, I would give him a fifth part of the rents I had received.

960. If either of those five parties were to apply to you for a fifth part of the rents, do you consider yourself bound to pay it to him?—I do.

961. Sir *William Rae.*] When did that happen?—I dare say it is eighteen months ago.

962. The gentleman never has applied during the 18 months for any part of his rent?—No.

963. Nor has any one applied for any part of his rent?—No.

964. Sir *Thomas Fremantle.*] What interest do the bills which are in your possession bear?—No interest is marked upon the face of the bills.

965. Mr. *Warburton.*] They will bear five per cent., will not they?—Yes.

966. Is it a promissory note, payable on demand?—Yes.

967. Could

967. Could the holder sue as well for interest as for principal upon those bills? —Yes.

968. At what rate?—At five per cent.

969. Sir *Thomas Fremantle.*] Do you know whether any interest has been paid upon those bills?—No.

970. Where are they lodged now?—I am not perfectly positive; I think I gave them back to Mr. Douglas.

971. Did you ever credit him in your account with the amount of interest upon those bills?—No.

972. Sir *William Rae.*] This transaction occurred in 1834; what has been received for the rents of those grounds?—I think there was a year passed before any rent was paid; I think there would be another year's rent due at Candlemas last.

973. Lord *Stanley.*] Have you any separate account with those five gentlemen for any other transactions?—No.

974. Have you any thing to their credit or debit on their account to this transaction?—Yes.

975. Have you entered an account with them upon it?—Yes.

976. Mr. *E. Buller.*] When Mr. Tulloh demanded his part of the rent from you, how had he paid his part, by bill or by cash?—By bill.

977. Sir *William Rae.*] When he asked for payment of the rent, did you say any thing to him about the interest upon his bill?—No, I did not.

978. Mr. *E. Buller.*] You do not hold the bill at present?—I think not; I cannot say at this moment.

979. *Chairman.*] Are there any other cases of joint life-rents that year?—No others.

980. Are there some cases of individual life-rents?—There are.

981. They were generally the same as those you have mentioned?—They were.

982. They were acquired by disposition from the fiar?—Yes.

983. Lord *Stanley.*] Were they all equally colourable with the last case?—I understood the question to refer to the first case I mentioned.

984. *Chairman.*] Were they all acquired by purchase?—No, Mr. Charles Bailey acquired one from his father-in-law, Lord Polwarth, by gift.

985. Were they put on by the political agents of the parties?—Yes.

986. Was there any thing particular about any of them, or were they just common cases of purchases of life-rents?—There is another life-rent by gift.

987. They were just the common case of life-rent acquired by purchase or gift?—Yes, one was a schoolmaster, a gift by office.

988. Lord *Stanley.*] In all the cases of life-rent, do you mean to say the purchase-money was *bonâ fide* paid?—There are some that I cannot speak to at all; there is another where I prepared the deed, I do not know how the price was settled, it was by one brother to another.

989. Some were put on by the agents to the opposite party, and you were uninformed as to the price?—Yes, by both parties.

990. Lord *Stanley.*] Are there any which you have reason to suspect or believe to have been colourable proceedings?—I consider that other one that I prepared just made for the purpose of giving the franchise.

991. That was from one brother to another?—Yes.

992. Are there any other cases which you consider to have been colourable, where no real consideration passed between the parties, or some consideration not intended to be enforced?—I do not know of any such.

993. *Chairman.*] How many other cases did you put on besides those joint life-rents?—There are only ten.

994. For how many did you act as agent?—Five, I think.

995. By whom were the other three cases put on?—By Mr. Rodger.

996. Do you know the particulars as to the terms by which they were acquired? —No.

997. Have you the means of knowing?—I should see the terms of the deeds granted in favour of the parties at the Registration Court; but as to the payment of the price, and other circumstances, I do not know.

998. Sir *William Rae.*] Were any objections taken by you to any of those votes?—

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votes?—I think it is likely the whole would be objected to on both sides; that has been the case for the last two or three years to object to all at the Registration Court.

999. Viscount *Stormont.*] Had you any circumstances on which to make out the objection?—Not at the time, I should think.

1000. Sir *William Rae.*] Were all the facts connected with those life-rents brought before the court?—No, I think not; the deeds were laid upon the table, and the tenant was examined to prove the rent.

1001. There was nothing else?—I do not think there was any thing else.

1002. *Chairman.*] How many joint tenants were inrolled in that year?—There were 19 new inrolments as joint tenants; there are two claims of the same description as joint tenants, but they are made by parties who had been previously upon the roll as sole tenants, restricting their own tenancy; there were 19 new cases.

1003. Lord *Stanley.*] Do you mean 19 cases or 19 persons?—Nineteen persons.

1004. How many persons were there?—They are all cases of joint tenancies, but sometimes there is only one of the two tenants inrolled, the other having restricted his claim in the manner I have mentioned.

1005. On how many properties are those 19 cases of joint tenancy?—Fourteen.

1006. *Chairman.*] You stated that before the year 1832 there were some cases of joint tenancy in Selkirkshire?—There were.

1007. Were those joint tenancies of the same character as those that previously existed?—Their leases, upon which they were inrolled, were in a different style, in different terms in 1832, to the leases afterwards in 1833 and 1834.

1008. Generally speaking, were they in all respects of the same character as those that had existed previously to 1832?—No, I think not, in some of the cases.

1009. In what respects did they differ?—Where a current lease to one person was altered, and two or three were introduced instead, and where there was no change of rent or the circumstances attending the management of the farm.

1010. State the first case of joint tenancy?—William and George Aitcheson.

1011. State the circumstances of that case?—The father of those young men was inrolled in 1832 as sole tenant of the same land.

1012. From whom did he hold it?—The Duke of Buccleugh; in 1833 the father put in a new claim as a joint tenant of the same lands; in 1834 the two sons claimed as joint tenants along with the father, not in equal proportions, however, for the sons had each only a seventh part of the farm.

1013. Lord *Stanley.*] Were the sons residing with the father or not?—The father did not reside upon his lands; he resided in Roxburghshire upon another farm.

1014. Did the sons reside upon the farm?—No.

1015. Were the sons residing with the father?—Yes.

1016. The two farms being held together, one as a rearing, the other as an agricultural farm?—I do not know the farm very well where the father resided; I believe it altogether to be a rearing farm; and the farms in Selkirkshire are rearing farms; I think they were both rearing farms.

1017. His sons lived with him?—Yes.

1018. *Chairman.*] You state that those two persons were admitted in 1834 as joint tenants with their father?—Yes.

1019. Do you know whether they acquired any interest in the farm at the time they acquired that lease?—I do not.

1020. Have you any means of knowing whether or not this was a case of joint tenancy, made for political purposes?—I think it was.

1021. Will you state why you think it was?—From the lease in favour of the father excluding assignees and sub-tenants, and the father being inrolled as sole tenant, and then that prohibition from sub-setting being taken off, and the sons assumed during the current lease, they each getting only a seventh part of the farm.

1022. The original lease to the father prohibited his assigning or sub-setting?—Yes.

1023. That clause was dispensed with?—Yes.

1024. In

1024. In what manner was it dispensed with?—By the Duke of Buccleuch signing a minute on the back of the lease, dispensing with that clause to the effect of certain tenants assuming the parties named in the minute.

1025. Did you see the minute?—I did.

1026. What was the purport of it?—The Duke of Buccleuch narrates that the lands are let to Aitcheson, excluding assignees and sub-tenants; and that having been requested to take off that prohibition to effect the purpose asked, two-sevenths of the lease to be assigned to the two sons, that the duke does accordingly do so; I think that is the purport of it.

1027. Mr. *Warburton.*] Is there any consideration stated, for which he made this indorsement?—None.

1028. Lord *Stanley.*] The two sons are living with the father, and engaged in agricultural pursuits?—Yes.

1029. They have no other profession or employment?—None, that I know of.

1030. Sir *William Rae.*] You say the father claimed the year before the sons, on this tack?—The father was inrolled in 1832 on the first registration, as tenant by himself.

1031. The new claim was for the three as joint tenants?—The first application I saw was the father claiming as joint tenant in 1833.

1032. With whom?—I did not see with whom.

1033. Was there any claim entered for the sons?—Not till 1834.

1034. How do you account for that, if the object was the having the qualification, the whole parties not claiming the first time?—Because the lease produced in favour of the father would not have supported the claim of the sons.

1035. What age was the father?—I do not know.

1036. Was he a man of 40 or 60?—I should say 60, from the age of the eldest son; but I do not know the old gentleman.

1037. What is the age of the eldest son?—Probably 35.

1038. Is the father still alive?—No, he has died lately.

1039. Is it consistent with your knowledge, that the sons managed the sales and transactions connected with this farm during the period of the father's life?—I have seen them in the markets selling and managing.

1040. Before they were made joint tenants?—I do not know; I know one of the sons only lately, but the eldest son I have seen many years; he has a farm in Peebleshire, I fancy, of his own, where he occasionally lives; I have seen him in the markets certainly.

1041. Mr. *Dunlop.*] Do you think the farmers in that district would be equally ready to go into this system of joint tenancies, if at the same time they were obliged to make over by deed of gift or deed one-seventh of the stock and profits of the farm?—No, I do not.

1042. *Chairman.*] How many years had the lease to run at the time he took in those joint tenants?—Five or six, I should think.

1043. Do you know that there were five or six years to run?—Yes; the leases on the Buccleuch estate are all for nine years; those I have seen; and the entry to this current term was at Whitsuntide 1830 or 1831, I am not certain which.

1044. How far is the residence of Aitcheson and his two sons from Galashiels?—It would be 28 or 30 miles.

1045. Do you know much about them?—No.

1046. Do you know much about the occupation of the sons?—I consider them both engaged in farming.

1047. What are your grounds for considering that?—From having seen them in the markets occasionally, selling stock.

1048. You suppose them to be regular farmers?—Yes.

1049. Sir *William Rae.*] Were objections taken to the claims of the sons when they were lodged?—Yes.

1050. By yourself?—Yes.

1051. On what grounds?—That they were not joint tenants, as stated in their claim, that they had not been in possession, and that they had not an interest.

1052. Was there any evidence laid before the sheriff upon those votes?—The parties themselves were brought up for examination.

1053. What did they state?—The sheriff restricted our right to examination as to any interest in the farm, but to put the simple question, were they joint tenants

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as described in the claim; that single question we were desired to put as much as we could in the terms of the statute.

1054. Was any other evidence led?—No; I wanted to examine them as to their interest in the stock and the profits, and generally their connexion with the farm and I was not allowed by the sheriff.

1055. Did you appeal against that judgment?—There was an appeal entered, but not discussed, I think in the Registration Court.

1056. Why not discussed?—I think there was one case tried, involving the principle of joint tenants in the Appeal Court, and the others were not discussed.

1057. Mr. *Warburton.*] Were the others which were not tried considered as governed by the one that was tried?—Yes; I do not recollect precisely, but there were a great number of objections entered on both sides, and the counsel slumped them by arrangements; there were a number withdrawn on each side.

1058. *Chairman.*] What is the next case of joint tenancy?—Thomas Ballantine.

1059. How do you designate him?—Residing in Edinburgh.

1060. He claimed as joint tenant of what farm?—Altreve.

1061. Whose tenant is he?—The Duke of Buccleuch's.

1062. What was the nature of the deed produced to substantiate his claim?—Just precisely the same as in the case I have mentioned as regards the excluding assignees and joint tenants, and dispensing with that; the father assuming the son, he was assumed by his father.

1063. What is Mr. Ballantine in Edinburgh?—He is a clerk in one of the gas-works.

1064. What gas-work?—The Edinburgh gas-work.

1065. Is there any particular name for the office?—I do not know the name.

1066. Is it the Edinburgh Gas Company he is a clerk to?—Yes, I think that is the title of it; I do not know that it has any other.

1067. Do you know whether he resides in Selkirkshire at all?—No, I believe not.

1068. Sir *William Rae.*] What farm was this person inrolled upon?—Altreve.

1069. Is there any house upon Altreve?—Shepherds' houses, I think.

1070. Is this gentleman still a clerk in the gas company?—I believe so.

1071. Is his father dead now?—Yes.

1072. Who is the tenant of Altreve now?—I do not know whether he is the eldest son; if he is, I suppose he will be the tenant since his father's death; it is only lately since he died.

1073. *Chairman.*] Do you know who is the tenant now?—I believe it must be this young man now; he is inrolled as joint tenant at this moment, and the father is dead.

1074. Therefore you suppose that the son must have succeeded as sole tenant?—I know nothing to the contrary; I think he is the oldest son, and I suppose he must have succeeded as his heir-at-law.

1075. Sir *William Rae.*] He still resides in Leith or Edinburgh?—To the best of my knowledge, he does.

1076. *Chairman.*] The original lease granted to the father was produced, and the clause dispensed with which excluded assignees and sub-tenants?—Yes.

1077. Was that dispensation to the effect of allowing that person to be taken in?—Yes.

1078. Was he mentioned by name?—Yes.

1079. Mr. *Warburton.*] With a general dispensation?—No.

1080. *Chairman.*] By what title did the son show that he was a sub tenant?—An assignation by the father, and implement of that.

1081. By whom was that assignation prepared?—Either Mr. Horne or Mr. Rodger.

1082. He did not assume them as joint tenant of the whole farm?—Yes, I think he did.

1083. Viscount *Stormont.*] Did not the father hold two farms?—Yes, he did.

1084. What was the name of the other?—Tinnis.

1085. Were they contiguous?—No.

1086. *Chairman.*] By whom was the original lease from the Duke of Buccleuch to the father prepared?—By Messrs. Hume & Gibson.

1087. Are those the Duke's ordinary agents?—Yes.

1088. Viscount

1088. Viscount *Stormont.*] Are you quite certain that the assignation was prepared by either Mr. Horne or Mr. Rodger?—Yes.

1089. Did you see it?—Yes.

1090. Cannot you speak positively to the fact?—I could, at the time of examining it.

1091. Can you now?—No, I cannot.

1092. Sir *Thomas Fremantle.*] How can you tell by inspection of the deed by what writer that deed was prepared?—It bears it upon the face of it.

1093. Sir *William Rae.*] This was a deed, not by the Duke of Buccleuch, but by the tenant?—Yes.

1094. The tenant might have a different agent from the Duke?—Yes, certainly he might.

1095. Viscount *Stormont.*] Was not there an elder brother to this young man?—Yes.

1096. Is he dead?—He is; my doubt in stating whether this son was the eldest, was in consequence of my doubt whether the eldest son was dead or not at that time, but I have heard he is dead.

1097. What age is young Mr. Ballantine?—Four or five and twenty, I should think.

1098. Sir *Thomas Fremantle.*] The father is dead, and the elder brother is dead?—Yes.

1099. Do you believe this clerk is still a clerk in Edinburgh?—I have heard he is.

1100. *Chairman.*] You have known this young man during a long time?—Yes, I have.

1101. How was he brought up?—I think he was apprentice to a wine-merchant.

1102. At what age did he go as apprentice to a wine-merchant?—He must have been young; 14 or 15 I should think.

1103. Has he ever been engaged in agricultural pursuits at all?—Not to my knowledge.

1104. Mr. *Divett.*] At what distance did the father reside?—Six or eight miles, or perhaps ten miles.

1105. At what distance is this farm from Edinburgh?—Thirty or forty miles.

1106. *Chairman.*] How near is it to Galashiels?—It is 16 or 18 miles from Galashiels, and Galashiels is 32 miles from Edinburgh; but I think there is a nearer road to Edinburgh than coming by Galashiels.

1107. Mr. *Divett.*] You do not know any thing about the occupation of the farm at present?—No.

1108. Sir *William Rae*] It is a sheep farm?—Yes.

1109. On which there is one shepherd's house?—There may be two or three shepherds' houses.

1110. Do you know the size of it, and the extent, as to the number of sheep upon it?—No, I do not.

1111. Can you state the rent of it?—Not precisely; I think between 200 *l.* or 300 *l.* a year.

1112. Mr. *W. Campbell.*] You mentioned that this gentleman had more farms than one; was the other farm in the same county?—Yes.

1113. Was there any dispensation on the other farm, allowing of sub-setting on that?—No.

1114. Sir *William Rae.*] There was no claim upon that, that is all you know?—That is all I know.

1115. Sir *Thomas Fremantle.*] You state that this young man was not bred, as you believe, to agricultural pursuits; is it an uncommon thing in Scotland for farmers to put their sons into business for a certain number of years prior to their settling as farmers in the country?—I have known instances of that; I have heard of young men writing in offices for a year or two before they went a farming.

1116. Mr. *B. Baring.*] As a preparation for undertaking the management of a farm?—No; I do not think the two have any connexion at all.

1117. Lord *Stanley.*] Can you state whether at the time this young man entered as a joint tenant, his elder brother was dead or not?—No, I cannot; I understood the elder brother had gone to the East Indies; I cannot say whether he was dead or not.

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1118. Would, in fact, the elder brother being dead, have produced a considerable difference as it respects the intentions of this young man as to the line of life he was to enter upon?—I do not know; he would not be bound to take up his father's leases, and if he did not think it advisable, he probably would not do it.

1119. He would probably, then, enter upon his father's lease, which his elder brother would have done, if he had been living?—I think he would have inherited his property; the elder brother was bred a surgeon, and went to the East Indies, I think; somewhere abroad, at any rate.

1120. Sir *William Rae.*] When did he go?—Four or five years ago, I should think.

1121. Nearly about the time when this tack was altered?—Yes.

1122. *Chairman.*] You have stated that you know there was an elder brother?—Yes.

1123. Do you believe that that person was assumed into that lease solely for a political purpose?—That is my opinion.

1124. Sir *William Rae.*] What age was the father at this time?—He would be a little upwards of 50; when he died he was not 60.

1125. *Chairman.*] What was the age of the young man?—He would be now about 24 or 25.

1126. What was the next case of sub-tenancy?—John and James Moffatt.

1127. What was the name of their farm?—Craik, I think it is.

1128. What is the value of it?—It is a large farm, a large stock farm, perhaps 500*l.* or 600*l.* a year.

1129. How did they become joint tenants?—By the same proceeding.

1130. Was the father tenant before?—They became joint tenants with their father.

1131. By being assumed into a lease with their father?—Yes.

1132. Who was the landlord?—The Duke of Buccleuch.

1133. Was the same process gone through of dispensing with that clause prohibiting sub-letting?—Yes.

1134. In the same manner as in the two last cases you have described?—Yes.

1135. Do you know whether all the farms upon the Duke of Buccleuch's estate in Selkirkshire contained the restricting clause?—All those leases which I examined in the Registration Court contained that clause.

1136. Did you examine a good many?—Yes, a good many.

1137. Viscount *Stormont.*] Is it the usual custom in that county to insert that clause in those leases?—Yes, I conceive it is.

1138. Almost invariably?—Yes, I consider it is only by special arrangement where it is different; that the custom is to have that clause excluding assigns.

1139. Mr. *Divett.*] Is it the custom frequently to dispense with it?—I never knew of any instances before this time.

1140. Mr. *Warburton.*] Previous to there being an object for political purposes for dispensing with such clauses, are you aware of such restricting clauses having been dispensed with?—No.

1141. *Chairman.*] You state that all you examined contained this clause?—Yes.

1142. Did you examine a great many?—Yes.

1143. In what year?—In 1832, in discussing those cases of joint tenants, the principal leases were again produced.

1144. In what year was that?—In 1834, where there were joint tenancy claims the principal leases were again produced and laid upon the table.

1145. Mr. Moffatt had been the sole tenant in 1832?—Yes, he had.

1146. He is not resident on that farm?—No.

1147. Is it a sheep farm?—Yes.

1148. Where do the sons reside?—They reside with their father, who has another farm in Dumfries-shire.

1149. Do you know any thing about them?—No.

1150. Do you know any thing about the pursuits of the sons?—No, I have heard the father was taking other lands for the sons, and I presume therefore they intend to be farmers.

1151. Sir *William Rae.*] At what distance is their residence from this farm, how many miles?—I do not know correctly, I cannot say.

1152. Will you venture to say it is more than five miles?—I cannot say.

1153. *Chairman.*] Did the sons produce a deed from the father to them adopting them as joint tenants?—Yes.

1154. Do

1154. Do you know by whom that deed was prepared?—By Mr. Horne or Mr. Rodger.

1155. Viscount *Stormont.*] Are you acquainted with the value of the Duke of Buccleuch's property in the county of Selkirk?—No, I am not.

1156. At what have you heard it stated?—I think I have heard different sums, from 7,000 *l.* to 10,000 *l.* a year.

1157. *Chairman.*] From whom did you hear that?—Just in the common conversation of the country.

1158. Were there any other cases of joint tenancy in that year?—There are three persons of the name of Knox inrolled as joint tenants upon the farm of Hutler Burn.

1159. Whose farm is that?—Lord Polwarth's.

1160. What relation are they to each other?—A father and two sons.

1161. Are they resident on the farm?—One of the sons is resident on the farm.

1162. What are the names of the three parties?—Walter Knox was the father, he is a shop-keeper residing in Hawick; James Knox, one son residing on the farm; and Walter Knox, junior, residing with his father at Hawick.

1163. James Knox is a farmer and resides on the farm?—Yes.

1164. The two others, the father and the other son, reside at Hawick in the county of Roxburgh?—Yes.

1165. What is their occupation?—The father is a shop-keeper, and he also keeps horses and carts, and the son drives the horses and carts or any sort of carriages, I suppose, with coals and lime, and so on.

1166. What sort of shop does the father keep?—A grocery, a sort of general shop, like the small country shops.

1167. Have those two persons, Walter Knox, the father and the son, any thing to do with the farm?—They have nothing to do with the management, so far as I know.

1168. Are they persons of agricultural pursuits?—I think not, from their occupations.

1169. How far is the farm from Hawick, where they reside?—Twelve or fifteen miles.

1170. Sir *William Rae.*] Who was the original tenant?—They are all entered at the same time.

1171. When?—At Whitsuntide 1833.

1172. None of them had been tenants of the farm before?—No.

1173. Had all three taken a lease of this farm from Lord Polwarth in 1833?—Yes.

1174. Sir *Thomas Fremantle.*] How many horses does the father keep?—I have seen three or four; I do not know that he has more than that; I have seen the son driving three or four carts past my own door.

1175. Viscount *Stormont.*] Had any of those three tenants been previously tenants of any farm?—No, they resided with their father in Hawick till they took that farm.

1176. Had the father ever been tenant any where?—Not what is generally understood as a farm; he might have a field or two near Hawick.

1177. How many fields may he have had?—I cannot say.

1178. Sir *Thomas Fremantle.*] Was that for the convenience of feeding his horses and supplying them?—Yes.

1179. This farm would be equally convenient for that, but rather more distant?—Yes.

1180. And instead of buying corn, he would grow it upon his own farm?—He might.

1181. Viscount *Stormont.*] From whom did they take this land?—I do not know.

1182. Was the father ever a tenant of Lord Minto's?—I do not know.

1183. Lord *Stanley.*] Which son have you seen pass your door with carts and horses?—The son who lives with the father.

1184. What is the rent of the farm?—Three hundred pounds a year.

1185. *Chairman.*] Do you know whether those horses and carts are employed on that farm at all?—I believe not.

1186. Do they go backwards and forwards to that farm?—I believe not.

1187. Do you know whether Walter Knox, and his son who resides with him, go at all to the farm?—I think I have seen the father upon the farm; I do not know

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know whether he goes occasionally or not; I believe I have seen the father there since.

1188. What is the distance of the farm from Galashiels?—Nine or ten miles.

1189. Sir *William Rae.*] Did they bring the provender for the horses from that farm?—I do not know.

1190. *Chairman.*] Where have you seen him upon the farm?—I have met him on the road when I have been there; that is all I know about his visiting the farm.

1191. Have you reason to know whether he was visiting the farm or visiting his son?—I cannot say.

1192. Mr. *Warburton.*] Did you ever see him employed in cultivating the farm?—I never saw it.

1193. Viscount *Stormont.*] How many times have you ever been on that farm?—I have crossed it 150 times.

1194. Since they have been there?—Perhaps 50 times.

1195. Sir *Thomas Fremantle.*] How old is the son who resides on the farm?—He has the appearance of 27.

1196. Has he any property of his own, distinct from his father?—Not that I know of.

1197. Is it stocked with the capital of the father?—Yes, I conceive it is.

1198. *Chairman.*] Do you believe that the father stocked it for the son, or that he has a share in it?—I believe the father would contribute the whole stock.

1199. Mr. *Warburton.*] Is the father a man of substance?—Yes.

1200. *Lord Advocate.*] Has the other son any interest in the farm?—He lives in Hawick, and, so far as I know, has no interest.

1201. Sir *Thomas Fremantle.*] Is he partner with his father in the stock at Hawick?—Not to my knowledge.

1202. Viscount *Stormont.*] Do you yourself know whether the sons have any interest in the farm?—I know that the sons, previous to taking the farm, lived with their father, and, according to my opinion, could have no separate capital, and that the capital was the sole capital of the father.

1203. Do you know that positively, or is it your own conjecture?—It is my own belief.

1204. *Chairman.*] Will you go to another case of joint tenancy?—Robert Gibson.

1205. What is he?—He is joint tenant of the farm of Fastheugh.

1206. Where is that farm?—In the county of Selkirk; he is joint tenant with his father.

1207. What is the value?—Probably less than 200*l.* a year.

1208. Does the son reside with his father on the farm?—Yes, on a different farm.

1209. Whose property is the farm?—The property the son is inrolled on is the property of the Duke of Buccleuch; the property the father lives on is the property of Johnson of Alva.

1210. Is he inrolled on the farm of Alva?—No, of Fastheugh.

1211. Was he admitted in the same manner as in the former case?—Yes.

1212. Have you the means of knowing whether he had acquired any interest or not?—No.

1213. Mr. *Warburton.*] Have you any reason to know whether he was interested in the account of stock?—No.

1214. Or whether he has any share of the produce?—I do not know.

1215. *Chairman.*] Do you know James Stoddart?—Yes.

1216. Where does he reside?—At Newburgh.

1217. Whose tenant is he?—The Duke of Buccleuch's.

1218. Was he assumed as joint tenant with his father in that farm?—Yes.

1219. In the same manner as in the former case?—Yes.

1220. Viscount *Stormont.*] Does he live on the farm?—Yes.

1221. *Chairman.*] Was the case the same, that the deed from the father to the son was prepared in the same way?—I believe the deeds were all prepared in the same way; the cases were all alike, so far as I can state.

1222. And that the deeds were prepared by Mr. Rodger or Mr. Horne?—Yes.

1223. Did you see the deeds?—Yes.

1224. Are

1224. Are you sure that the deeds were prepared by one or other of those persons?—My decided impression at this moment is, that Mr. Rodger was the person who prepared the deeds; but I am satisfied they were prepared by one of them.

1225. Do you know the farm of Whitebank?—Yes.

1226. Were any joint tenants registered upon that?—Yes, two sons were assumed by their father, William Young and Thomas Young.

1227. In what manner were they assumed?—The father was inrolled in 1832 as sole tenant of the farm, upon a lease that was produced, for 19 years, a few years of which had run; and then in 1834 that lease was cancelled, and there was another lease produced in favour of the father and two sons.

1228. The former lease was renounced, and there was a new one granted?—I think it was stated in the court that the former deed was cancelled, and this new one prepared.

1229. Is that a usual transaction?—No.

1230. Lord *Stanley.*] Has not it been a usual transaction since the passing of the Reform Act?—Yes, I think it has.

1231. Viscount *Stormont.*] Did you never know it practised before?—I have seen leases renounced, and given up for particular reasons; the inability of the tenant, or his wish to retire, or a variety of reasons; but I never knew one renounced, and a fresh one taken to the father and son.

1232. *Chairman.*] Are you acquainted with those parties?—Yes, they live in the neighbourhood.

1233. Do you know whether any interest was acquired by the sons?—The sons were living with the father, and working upon the farm.

1234. Viscount *Stormont.*] Did you see the old and the new lease of the Youngs?—Yes.

1235. Were they for the same number of years?—Yes, and some of the conditions differed, so far as I recollect.

1236. Then they were not identical?—Identical, to the best of my belief; the rent and the term of years remained the same; but the other limitations between the landlord and tenant, as to management, differed.

1237. *Chairman.*] Do you mean that the new lease was for the remaining 16 years, or for 19 years?—I think the new lease was to terminate at the same period as the old.

1238. What other cases of joint tenancy were there?—William Brydon, of Philoger, joint tenant along with his uncle.

1239. That is one of the cases you referred to yesterday?—Yes.

1240. Sir *Thomas Fremantle.*] Does he live with his uncle?—No, he lives on a different farm.

1241. *Chairman.*] Will you go on to the next case of joint tenancy?—Andrew Easton, of Alemore.

1242. With whom did he become joint tenant?—With his father, on a farm.

1243. On whose estate?—Mr. Pringle's, of Clifton.

1244. Sir *William Rae.*] Was that in the same way, under a dispensation?—No, the lease to the father terminated at the time the son entered; this was a new lease.

1245. *Chairman.*] Will you pass on to the next?—Robert Laidlaw, of Bowerhope; he was made joint tenant with his father.

1246. Mr. *Warburton.*] Who was the landlord?—Lord Napier.

1247. What were the circumstances of his being made a joint tenant?—I do not know other particulars, further than that he was inrolled on the certificate of Lord Napier's factor that he was so.

1248. Lord *Stanley.*] Does he live with his father?—Yes.

1249. He has no other pursuit?—No.

1250. Mr. *Warburton.*] Was there any assignment of any interest to him?—Not that I know of.

1251. Sir *William Rae.*] When did the grant of joint tenancy take place to him?—I do not know further than that he was inrolled in that year.

1252. Can you say when the transaction took place?—No, I do not know.

1253. Sir *Thomas Fremantle.*] Was the vote objected to before the sheriff?—I am not sure; I can ascertain the fact, if it is wished; I never saw the father's lease;

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lease; the father was inrolled upon the mere certificate by the factor; I do not know any thing of the previous particulars.

1254. Was the father inrolled for the first time then?—No, he was inrolled as sole tenant in 1832; whether there was a new lease, or the old lease had terminated, I do not know.

1255. *Chairman.*] Go to the next case?—Thomas Mitchell, junior; his case was mentioned as connected with the County Inn, in the first day's inquiry; his father was inrolled in 1832 as sole tenant, and he was re-inrolled in 1834 as joint tenant.

1256. Lord *Stanley.*] Does his son live in the house with him?—Yes.

1257. Does he still live in the house?—Yes.

1258. Has he any other occupation or employment?—I do not think he has.

1259. *Chairman.*] Will you proceed to the next case?—Peter Johnson was some time joint tenant with a person of the name of Brown.

1260. Whose tenants are they?—I think the landlord is a Mr. Pott, in Edinburgh.

1261. Do they reside in the county?—No, it is a sheep farm, and he does not reside upon it.

1262. Lord *Stanley.*] Are Johnson and Brown any relations?—I do not think they are.

1263. Was either of them on the farm before?—I will refer to my book for that information.

1264. Why cannot you go through that as you have gone through the others?—Because there is nothing particular about it; Mr. Johnson is a total stranger to me.

1265. *Chairman.*] What is the next case?—Thomas Anderson of Farms.

1266. With whom did he become joint tenant?—With his brother.

1267. When was he assumed as joint tenant?—He commenced in 1834 as joint tenant.

1268. Who is his brother?—John Anderson.

1269. Who is the landlord?—Lord Polwarth.

1270. Sir *William Rae.*] Had either of them been inrolled before?—The brother, John Anderson, was inrolled before.

1271. On this same farm?—No, I think on a different farm in the same county.

1272. Mr. *Warburton.*] Where does the brother reside?—He resides at Bridgar Hill.

1273. What is he?—A farmer.

1274. *Chairman.*] What is the next?—Walter Brydon.

1275. Was he assumed by James Brydon, whom you mentioned the other day?—Yes, his brother.

1276. Are there any other cases?—No, I believe that is the whole.

1277. Viscount *Stormont.*] Were William Mean and Andrew Mather registered in 1834?—They were.

1278. From whom did they purchase their property?—From two different parties, two different purchases.

1279. Was the transaction negociated by you?—It was.

1280. Was the price paid?—Yes.

1281. How was it paid?—It was paid in cash to the seller; but the parties gave their obligation for it.

1282. To whom did they give their obligation?—I do not know whether I hold the obligation myself or not.

1283. Was the obligation a bill?—It is in the shape of a bill; I wrote a bill some years ago.

1284. Who produced the cash?—I did myself, at the time.

1285. You received the bill?—Yes.

1286. They are both dead?—Yes.

1287. Have any of their representatives claimed since?—No.

1288. Are you sure there was no claim by the son of Mean?—He is not upon the roll; he claimed.

1289. What became of that claim?—It was withdrawn.

1290. What was the reason of its being withdrawn?—He was also a voter in the county of Roxburgh, and there was an arrangement made, when I was not present; but it was reported to me, that he was to be put on the roll for the county of Roxburgh, without discussion as to his father's settlement, agreeing to withdraw his claim for the county of Selkirk.

1291. With

1291. With whom was that arrangement made?—The agent for the parties.

1292. Were you a party to that arrangement?—No, it was done at Jedburgh; I was not present; I believe Mr. Horne was one of the parties; the other was the counsel employed either in Roxburgh or Selkirk.

1293. What ground could he have for giving up a claim to which he was fully entitled?—I understood there was something peculiar in his father's settlement.

1294. Did his son succeed to his father's property?—I believe his father made a deed of trust in favour of the son and his brother; whether there were other trustees I cannot say; I rather believe not, and that there were some directions and something particular in the form of the deed, that the son did not want it exhibited in the Registration Courts.

1295. Mr. *Warburton.*] There were family secrets he did not wish to be known?—Yes, I understood that was the case.

1296. Viscount *Stormont.*] What has become of that property since?—Mr. Mean and his mother and the heir of Mr. Mather concurred in granting a conveyance to other parties.

1297. Who were those other parties?—I cannot state at the present moment, but I will ascertain the fact.

1298. What became of the bill?—The transaction, so far as I know it, was given up to Mean and Mather's heirs, they conveying the property, at the prices they were bought at, to other individuals.

1299. What became of the bill?—It is either in my own possession or in the possession of Mr. Douglas; I think it is in Mr. Douglas's possession at this moment.

1300. Have you disposed of it to Mr. Douglas?—Yes; Mr. Douglas has it, I believe.

1301. For what amount was that bill?—It was upwards of 300*l.*

1302. Did Mr. Douglas pay you that 300*l.* when he took that bill?—Yes.

1303. You cannot say whether it is in your possession or that of Mr. Douglas?—I think it was given up to Mr. Douglas.

1304. That bill has never yet been cancelled?—I do not know.

1305. Sir *Thomas Fremantle.*] Who was the seller originally to William Mean and Andrew Mather?—Mr. William Paterson.

1306. When did Mr. Douglas purchase the bill?—I had a good many cash transactions with Mr. Douglas, and the amount of that bill was paid to me in those transactions; it must be a good while ago; Mr. Douglas became entitled to it in the course of those cash transactions.

1307. When was that, in point of date, was it during the lifetime of Mr. Mean and Mr. Mather?—Yes, my interest in the cash transactions was closed before their death.

1308. You had sold the bill before the death of Mr. Mean and Mr. Mather?—Yes.

1309. Mr. *Warburton.*] It was paid to Mr. Douglas in settlement of an account?—It was mixed up with a great many other cash transactions I had with Mr. Douglas, and he became entitled to it.

1310. Viscount *Stormont.*] Are you Mr. Douglas's private agent?—In some matters; I have no charge of his property.

1311. Were those political accounts or private accounts, or partly one and partly the other?—Partly political and partly private.

1312. Were they very large accounts?—Yes, I have had a good many transactions with him.

1313. The political part of them?—There are a good many transactions.

1314. Did Mr. Douglas, in point of fact, act as the mediator between Mr. Pringle, of Clifton, and you?—In many cases he did; I understood Mr. Douglas's connection with all those matters to be from a desire to give support to Mr. Pringle.

1315. *Chairman.*] Is Mr. Douglas himself a keen partisan?—Yes.

1316. Was he so previous to this occasion?—Yes.

1317. Sir *Thomas Fremantle.*] By whom was that bill drawn?—It was drawn in the way of a promissory note by Mean and Mather.

1318. You say this bill is still in the hands of Mr. Douglas?—It was in my hands at one time.

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1319. Do you believe it is still in existence?—I cannot say; I do not know what became of it.

1320. Viscount *Stormont.*] You stated that you do not know whether it was in your possession or Mr. Douglas's, then that you believed it was in the possession of Mr. Douglas?—Yes, I believe so.

1321. Sir *Thomas Fremantle.*] Do you know whether it is cancelled or not?—I cannot say.

1322. Do you know whether those parties who have taken the interest of Mean and Mather have paid any consideration?—I think that the parties just now who have the right to that subject have it in common with other subjects; but until I have ascertained the names I cannot answer that question expressly.

1323. Lord *Stanley.*] Did this promissory note bear interest?—Yes.

1324. Have you received interest?—No, I drew the rents.

1325. While you held the promissory note of the purchasers of the property you received the rent?—Yes.

1326. You paid yourself out of the rents the interest on the promissory notes?—Yes.

1327. Were they just equivalent?—No, the rents exceeded the interest.

1328. Did you pay over the balance of the rent to Mr. Mean and Mr. Mather?—No.

1329. To whom was it paid?—It is in my hands now.

1330. On what ground do you retain it?—The parties have not applied to me, and I have not given it.

1331. The representatives of the parties who are dead have not applied to you for a settlement of the account?—No, I consider myself bound to pay this, when they apply to me, but they have not applied to me.

1332. Do you expect to be applied to for a settlement of the account?—I expect so; I hold the money, subject to pay them when they apply to me.

1333. Sir *Thomas Fremantle.*] Was there any conveyance of this property in the first transaction from Paterson to Mean and Mather?—Yes.

1334. What became of that?—I have it, I think.

1335. Was the deed ever in the possession of those two parties?—There were two deeds, and after they were executed, they were in the hands of Mr. Douglas.

1336. *Chairman.*] Do you know whether they were ever in the hands of those other parties?—I do not know whether they were or were not.

1337. Viscount *Stormont.*] Who drew them up?—I did.

1338. You say they were in Mr. Douglas's possession?—Yes, they were returned to me, for the purpose of getting the parties put upon the roll; and I think they are in my possession now.

1339. Did you see them executed?—Yes.

1340. Why were they given to Mr. Douglas?—Because I conceived I should get the money through Mr. Douglas; I considered him the proper party to go and settle with Mean and Mather.

1341. Are you to be understood that, though you advanced the cash, you had a previous understanding with Mr. Douglas that you were only paying that cash for him?—Yes.

1342. Sir *Thomas Fremantle.*] It was on his credit you cashed their promissory note?—Yes, I considered I was entitled to get that payment from him.

1343. It was not on the credit of those parties you did it?—No, I would have credited those parties a similar amount.

1344. *Lord Advocate.*] You having their note, they were bound to you upon their note?—Yes.

1345. You had their credit upon that note, and also a further credit upon Mr. Douglas?—Yes.

1346. Sir *Thomas Fremantle.*] Had you an undertaking from Mr. Douglas to pay you 300*l.*?—No.

1347. Viscount *Stormont.*] Has the same conveyance deed been made over to the parties?—The same deed that Mean and Mather had, has been made over by new deeds, by assignation, as it is termed.

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Veneris, 24° die Februarii, 1837.

MEMBERS PRESENT.

Mr. W. Campbell.	Sir William Rae.
Mr. Divett.	Mr. Fox Maule.
The Lord Advocate.	Sir Hugh Campbell.
Mr. G. Ferguson.	Mr. Warburton.
Viscount Stormont.	Sir Thomas Fremantle.
Lord Stanley.	Mr. Bingham Baring.

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. *Robert Haldane*, again called in; and further Examined.

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1348. Sir *William Rae.*] HAVE you stated all the cases of 1834 of joint proprietors and life-renters and joint tenants?—I think so.

1349. You do not recollect any other joint proprietors in 1834?—No.

1350. Do you recollect the case of Alexander Tutopp and Henry Cunningham?—No, I do not think that was a joint case.

1351. Was there such a case?—Not connected with each other; Tutopp was on the roll for the same property and Cunningham was on the roll for another property he acquired of Tutopp.

1352. Was not it the same property?—I do not think it was.

1353. Are you certain that Tutopp had not split his property in order to introduce Henry Cunningham?—I think Tutopp was inrolled in 1832, and Cunningham was inrolled in 1834; I cannot say whether the property was the same; I think it was not, for I do not recollect Tutopp being re-inrolled, which must have been done in that case.

1354. *Chairman.*] Was Cunningham inrolled as a joint proprietor?—I think not; my impression is that Tutopp sold him a portion of his property, that it must have been a portion on which Tutopp himself was not inrolled.

1355. Sir *William Rae.*] You conducted the claims?—I could ascertain from the claims whether it was so or not.

1356. Do you know of a case of joint proprietors, a person of the name of Main, a distiller, at Kelso, and John Mason, writer, at Kelso?—I think I must have mentioned that case; I have it here.

1357. What was the name of the property on which they made that qualification?—Houses in Selkirk.

1358. More than one?—Two.

1359. Had they purchased those houses?—Yes.

1360. Was the price paid?—Mr. Main granted a bill for his price, and Mr. Mason granted a bond.

1361. Who was the seller?—The seller of one of the properties was a person of the name of Hogg; the other was Symington, I think.

1362. Do you know whether those bonds or bills have been paid?—I do not think they have.

1363. Those two were voters in the liberal interest?—Yes.

1364. Do you recollect any case of joint property of a person of the name of Robert Emand?—There are two Robert Emands.

1365. The case referred to is that of Robert Emand and his son?—Robert Emand was first inrolled himself.

1366. *Chairman.*] Was that a case of joint property?—Not at first; the father was inrolled first, and then gave a disposition to his son of part of it.

1367. They were inrolled as joint proprietors?—Yes.

1368. Sir *William Rae.*] There was no money paid to your knowledge?—I had no charge of that.

1369. Was there a case of George Emand and his son?—Yes, in precisely the same circumstances as that of Robert Emand.

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1370. He admitted his son?—Yes.

1371. Do you remember a case of joint property of a person of the name of Walter Shortread and his brother?—Yes, that was precisely the same case with the Emands, with the difference that it was not father and son, but two brothers; the property belonged to one brother, and he conveyed a joint interest to his brother.

1372. Was that without the payment of any part of the price?—I think so.

1373. Do you recollect the case of joint property of persons of the names of James Gray and Walter Hogg?—I have no note of it, but there is such a case; I thought it had not been in 1834.

1374. Were those persons relations?—They were not connected at all.

1375. Was there a joint purchase of property?—The property first belonged to Hogg; it was sold by creditors of Hogg's; there was a heritable bond; it was bought back by Hogg, and a disposition from the bond-holders was taken in favour of James Gray for half the subject, and the other half to Hogg, in life-rent and to another person in fee.

1376. Did Gray pay any part of the price?—He did.

1377. You know that?—Yes.

1378. Was either of the parties rejected at the poll when he claimed?—Hogg was.

1379. Why?—Because the sheriff thought the life-rent was not so constituted as to admit him.

1380. And Gray was admitted?—He was.

1381. As sole proprietor?—As half proprietor.

1382. Do you know of a case of joint property that year, Sir William Scott and Sir Daniel Sandford?—That was in 1833, I think; I think Sir William Scott was inrolled in 1833; I know there was such a case, but I cannot state the year positively.

1383. Cannot you state the year at all?—It was either 1833 or 1834.

1384. *Chairman.*] Have you any notes before you from which you can speak?—No.

1385. Sir *William Rae.*] What is the nature of that case?—The property consisted of houses in Selkirk; there were two purchases, I think; the dispositions were taken in favour of Sir William Scott and Sir Daniel Sandford.

1386. Separate dispositions?—No, joint.

1387. Sir *William Rae.*] Joint property?—Yes.

1388. What was paid for it?—I think nearly 300*l.*

1389. By whom?—By Sir William Scott, I think.

1390. *Chairman.*] Was that the price of the whole subject?—Yes.

1391. Sir *William Rae.*] Did both those parties claim to be inrolled?—Yes, they did.

1392. Did you make the claims?—Yes.

1393. By what authority did you claim for Sir Daniel Sandford?—By his own written authority; I think by his own mandate.

1394. Was he inrolled?—He was.

1395. Did he continue upon the roll?—For a period; he is off the roll now.

1396. How came he to go off?—By disposing of his property.

1397. It was not by his declaring he knew nothing of the purchase?—Not to my knowledge.

1398. When was he struck off?—I think the year after he was inrolled.

1399. Was there an election before that, while he was upon the roll?—I do not think there was.

1400. How came he to be struck off?—By disposing of his property.

1401. By his own desire, or was an objection taken to him?—I do not think there was any objection taken to him.

1402. To whom did he dispose of it?—To Mr. Gilbert Elliott.

1403. Sir Daniel Sandford disposed of that property to Mr. Gilbert Elliott?—Yes.

1404. Had you his written authority to inrol him?—That is my belief.

1405. Are you possessed of it now?—I think I am.

1406. Do you know any thing of a joint property by Mr. John Richardson, solicitor, and Mr. Currie?—Yes.

1407. Did you make that purchase?—Yes.

1408. What was it?—Land.

1409. Where?—

1409. Where?—Near Selkirk.

1410. Was it a field or houses?—Three fields, I think.

1411. You conducted the claim and inrolled them, did you?—Yes.

1412. Had you any written authority from Mr. Richardson for doing that?—I do not think I had.

1413. Was it without his knowledge?—I do not know; I never had any communication with Mr. Richardson.

1414. With whom had you any communication?—With Mr. Douglas.

1415. The same gentleman you mentioned in a former part of your evidence?—Yes.

1416. He instructed you to make that purchase for those gentlemen?—Yes.

1417. And you made the purchase accordingly?—Yes.

1418. Did you enter a claim for them accordingly by his authority?—I think I had a mandate from Mr. Currie, but I do not recollect that I had one from Mr. Richardson.

1419. Did Mr. Richardson withdraw next year?—Yes.

1420. Why?—I do not know.

1421. Was not it because the whole transaction proceeded without his knowledge?—I do not know any thing about it.

1422. Did you never hear that before this moment?—Yes.

1423. From whom?—From Mr. Douglas; but I think I did not hear of it till after Mr. Richardson had conveyed the property to another party.

1424. Is there an individual inrolled as a joint proprietor in the place of Mr. Richardson?—Yes.

1425. Who is it?—Sir David Erskine.

1426. Did you conduct that transaction?—Yes.

1427. What was paid by Sir David Erskine?—Just half the price.

1428. How much was that?—Four hundred and twenty or four hundred and thirty pounds.

1429. Was that the whole or the half?—The half; the whole price, I think, was 850 *l.* or near it.

1430. How did he pay this?—He granted a bill for it.

1431. To Mr. Douglas?—Yes; I think so.

1432. What became of that bill?—I hold it.

1433. It is still unpaid?—So far as I know, it is still unpaid.

1434. All those joint proprietors you have now mentioned were voters in the liberal interest?—I think so.

1435. Mr. *Maule.*] Is Sir Daniel Sandford a voter in the liberal interest?—He never voted.

1436. Viscount *Stormont.*] Did you put on his claim as agent for the liberal interest?—I did.

1437. Sir *William Rae.*] Do you remember any cases of joint proprietors of long leases; do you recollect joint property in Galashiels in 1834, in the name of Elliot?—I think the person referred to was very likely Elliot Anderson.

1438. When was he inrolled?—One thousand eight hundred and thirty-four.

1439. Who was inrolled with him?—Andrew Hislop.

1440. When was the purchase or joint property acquired?—It must have been a year before.

1441. It must have been in 1833?—Yes.

1442. Did you conduct that transaction?—I think Mr. Anderson conducted it himself.

1443. Were you in the knowledge of it?—Yes.

1444. Can you say whether it was in January 1833 or not?—No, I cannot.

1445. What was the nature of that joint property?—It consisted of houses granted under 99 years leases, renewable in the way I have mentioned.

1446. Those two persons purchased this lease jointly, and were inrolled upon it, having paid the price?—Yes.

1447. Do you remember a case of joint property on joint leases in which your own brother was concerned?—Yes, I do.

1448. State the circumstances of that case?—It is a case in which my two brothers bought a long lease, property on which they were inrolled.

1449. Was that in 1834?—Yes.

1450. They bought in 1833, and inrolled in 1834?—Yes.

1451. Where was that property?—In Galashiels.

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1452. What was the nature of the property?—Houses, and a small area of ground.

1453. What was its value?—I think they purchased it at 345 *l.*

1454. What was the rent it brought?—It never has been properly rented; my father lives in part of it, and part is let; but I should suppose the value of it, when they bought it, was from 26 *l.* to 30 *l.* a year.

1455. Was it purchased for the purpose of obtaining a qualification?—No, it was for the purpose of continuing my father in possession; the person who held it was going to America, and wanted to sell, and my father wished to continue; I think, also, that my brothers wanted a qualification.

1456. Was there another case of long lease, in which David Haldane and Hugh Lees were concerned?—Yes.

1457. What relations were those?—One was my brother, and the other my brother-in-law.

1458. What was the nature of the purchase there?—Just the same as that of my other brother.

1459. Not the same property?—No, but the same title, and purchased in the same way.

1460. Was it the same subject?—No, it was a different subject, bought at two prices; this was about 300 *l.*

1461. Was this purchased for any other purpose than obtaining a qualification?—I think their principal object was obtaining a freehold qualification.

1462. Were those persons both admitted?—They were both refused in 1834, on account of the number of words contained in their deed being 20 or 30 more than the statute allowed; two sheets of stamped paper ought to have been used, and there was but one; it was an error.

1463. Was there any other case of joint property on long leases?—Yes, there was another case.

1464. What was that?—It was Mr. Crichton, the Duke of Buccleuch's chamberlain, at Drumlanrig, and Mr. Harley Maxwell, the chamberlain at Langham; they bought also leasehold property, consisting of houses.

1465. A joint purchase?—Yes.

1466. Was it a *bonâ fide* transaction, as it appeared to you?—I believe it was for the purpose of voting.

1467. Were they admitted upon that subject?—Yes; they were objected to on the score of value.

1468. What was the value?—It was proven to be 1*s.* 6*d.* or 2*s.* more than was necessary to qualify them.

1469. Those persons were in the tory interest?—Yes.

1470. And the others now brought to your recollection were in the liberal interest?—Yes.

1471. Why did you omit those yesterday?—I was not asked any cases of joint tenancy on long leases yesterday.

1472. Were not you asked to state any cases of joint proprietors?—Yes, but I stated that I had distinguished those on long leases into classes, and I was not asked particularly to that class.

1473. How do you answer the question as to those cases of joint property to which you have been asked?—I understood the question to be put to me as to persons inrolled proprietors, and I was asked also whether persons on long leases were inrolled as proprietors; I either was asked that question, or I explained that to the Committee myself.

1474. You mentioned the case of three persons of the name of Knox, in Hawick; do you know that the farm in that case was advertised to be let by tender?—I do not recollect positively, but I believe it was so; that is my impression, certainly.

1475. How did those persons vote at the election?—The father, I think, voted for Mr. Pringle, of Whitebank; one of the sons did not vote, I think, and the third voted for Mr. Pringle, of Clifton.

1476. Viscount *Stormont.*] Amongst the nineteen cases of joint tenants mentioned yesterday, there was one you did not recollect, and to which you wished to refer; will you give an explanation of that?—It is the case of Peter Johnson; he is inrolled as one of the joint tenants or sub-tenants, and joint occupants of the lands and farm of Overphawhope, and there is no other person inrolled as a joint tenant upon that same farm.

1477. Whom is he joint tenant with?—My paper does not specify; I think it was

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was one of his brothers, Walter Johnson, of Capergill, who is inrolled upon a different farm.

1478. There was a person of the name of Brown, who was he?—That is a different case from Peter Johnson; there is a Walter Johnson and William Brown inrolled as joint tenants of the lands of Podburn; they were inrolled in 1832; I know that one of the Johnsons was a co-tenant with his brother, but on looking into my books I find that it is not the Peter Johnson whom I have named as a joint tenant in 1834, but a Walter Johnson, inrolled as joint tenant with Brown in 1832, and Peter Johnson, whom I mentioned as a joint tenant in 1834, described himself as one of the tenants or joint tenants of the land and farms of Overphawhope.

1479. Then Peter Johnson is not a joint tenant with Brown; Brown was, you say, joint tenant with Walter Johnson in 1832?—Yes.

1480. *Chairman.*] Do you know who was a joint tenant with Peter Johnson in 1834?—No.

1481. There is a joint tenant with Peter Johnson who is not inrolled?—He is not inrolled upon that land, and I do not know who he is.

1482. Viscount *Stormont.*] Can you refer to 1832 and state whether there were not three persons inrolled upon that farm?—No; I have no notes of 1832.

1483. Was not a person of the name of Pagan upon that farm?—No, I think it is a different farm, so far as I recollect.

1484. How many persons are inrolled on that farm now with Walter Johnson and Brown?—Just those two.

1485. Lord *Stanley.*] The system of joint tenancy in farms has not been introduced since the year 1833, for you have specified a case that occurred in 1832?—I was asked before, and I said there were a number of cases of joint tenants in 1832; eight or ten, I think, I said.

1486. Viscount *Stormont.*] You do not recollect on which farm Pagan was inrolled?—Not at this moment; I do not believe he is inrolled as a joint tenant; no.

1487. Mr. *Maule.*] Do you consider that any of the cases of joint tenancy inrolled in 1832, were cases in which all the parties had interests in the subjects on which they were inrolled?—Yes.

1488. Do you consider those cases of joint tenancy which have been inrolled since 1832 as of the same description?—No.

1489. Viscount *Stormont.*] Have you counted up the number of tenants of the Duke of Buccleuch upon his estate in Selkirkshire?—I have a list here of 52; 43 of whom are agricultural tenants, and nine are tenants under long leases for houses.

1490. How many were there in 1832?—Twenty-nine.

1491. *Chairman.*] In that number do you include the persons who held long leases from the Duke of Buccleuch?—Not in the 43; I think there are nine of those upon the roll.

1492. Are there any other persons inrolled under titles from the Duke of Buccleuch?—Not except the lease-holders.

1493. What is the nature of their titles?—The leases are for 99 years, of a small area of ground, upon which the people who acquired a right put down houses.

1494. How many of those persons are inrolled?—I think there are nine standing upon the roll just now.

1495. In what year were they inrolled?—Four of them in 1833, two in 1834, and three in 1835.

1496. Did those persons all claim in 1832?—All but one, I think.

1497. How many of them were admitted?—There were none admitted in 1832.

1498. On what ground were they rejected?—They had no written title in 1832 to support the claim; they had no lease.

1499. What was the nature of their holding?—They claimed as tenants under long leases upon the face of their claims; but they had not got long leases.

1500. Then they claimed again the following year?—They claimed again the following year, and were objected to, because the leases produced at the Registration Court in 1833 were not 12 months old, which it was considered they required to be by the statute.

1501. Were they admitted or rejected?—There were four of them admitted in 1833, and the rest were all rejected.

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1502. Upon their value?—It was by arrangement.

1503. Was the objection sustained that they had not been 12 months in possession?—As to all of them, but those four.

1504. It was not sustained as to those four?—No, they were admitted.

1505. Were the others all rejected on account of that objection of not having been 12 months in possession?—That was the leading objection; but I think, in 1833, there were some also rejected for want of value; there was a considerable difference of opinion as to the witnesses examined, with regard to value.

1506. Did those persons claim again afterwards?—Yes.

1507. Were they admitted?—Yes.

1508. Was the same objection brought against them then for want of value?—Yes; but there had been additions made to the value of the properties in the intermediate time.

1509. Are you to be understood to say, that in 1832, those persons were rejected because they had not leases, which leases were furnished them before 1833?—Yes, they were rejected in 1832, for want of the leases.

1510. Those leases were furnished them before 1833?—Yes; but at the Registration Court in 1833, they were not 12 months old; I think they were dated in September 1832, and were rejected at the period of the claims in 1833, not being 12 months ago.

1511. They produced leases in 1833?—Yes.

1512. There were some others of those rejected in 1833, for deficiency of value, that were admitted in 1834?—No; I consider that they had been rejected on the same ground in 1833, but there was an arrangement between the parties on the two sides, and those were admitted, founded partly on the leases, and partly on the Duke of Buccleuch's rental book.

1513. What was the nature of the arrangement?—It was an arrangement between Mr. Rodger, as agent for the claimants, and myself.

1514. Did you think those persons' titles were good?—No; I do not recollect the particulars of the arrangement, but it broke up in court, owing to a misunderstanding; those persons were admitted before the misunderstanding, but the rest were all rejected.

1515. What was the nature of the arrangement between you and Mr. Rodger?—It was accommodating on both sides to what was established in the Registration Court, with regard to value, and the witnesses to be examined; and the arrangement was, that the Duke of Buccleuch's rental book was to be held as marked by the Sheriff; that was an arrangement between us to shorten the proceedings of the Appeal Court.

1516. Viscount *Stormont.*] What was the original tenure under which those persons claimed?—They claimed as tenants holding upon leases of upwards of 57 years' endurance; I believe that is the expression used in the claims.

1517. Did they produce no leases of any kind whatever?—None in 1832.

1518. *Chairman.*] Did they produce any deed whatever?—Nothing but the Duke of Buccleuch's rental books, in which an entry has been made at the top of the folio, the persons' names, and some note as to the area of the ground let.

1519. Mr. *Fox Maule.*] Did they produce any receipt for rents?—I think they must.

1520. *Chairman.*] Did they produce a receipt for rent, equal to the value necessary for a qualification?—The receipt was for the ground rent, not for the value of the house; 6 *s.* or 7 *s.* I think.

1521. Sir *William Rae.*] Do not you know that there is such a description of tenants as renters?—I believe there is.

1522. What is the description of those persons?—I would have described those feuars as renters.

1523. Are they not tenants who merely hold by an entry in the rental of the landlord?—Yes; the description in the Duke's rental book, as in this case.

1524. That, by the law of Scotland, is equal to a lease in certain cases, is it not?—It was not so held in the Registration Court.

1525. *Lord Advocate.*] Is that, in the law of Scotland, held to be for a limited time?—Those leases, I think, terminate at the end of 99 years.

1526. *Chairman.*] How many of those persons claimed in 1832?—Fifteen, I think.

1527. In 1832, you say they were all rejected for want of title?—Yes.

1528. Of

1528. Of those 15, how many claimed in 1833?—I do not think there were so many; I think there were one or two died, and that one or two more found that the property was not of a rent to give a vote.

1529. How many claimed in 1833?—I should say, ten or twelve.

1530. Four of those were admitted?—Yes.

1531. Did all those who claimed in 1833 show titles?—Yes.

1532. What was the ground on which the rest were rejected?—That the titles were not of sufficient age, a twelvemonth old, to support the claim.

1533. How came four of the titles to have been a sufficient time, and the other eight not?—The Appeal Court, I think, held a different opinion from the sheriff of Selkirshire upon the subject; they held that the leases of 1833, with the entry of 12 months old, supported by the Duke's rental books, supported the claims.

1534. Were all the leases made out at the same time?—To the best of my recollection they are of the same date.

1535. What was the distinction between the four cases on which the tenants were admitted, and the eight on which they were rejected?—None.

1536. How came the eight to be rejected?—By the arrangement breaking up between Mr. Rodger and myself.

1537. Are you sure that the other eight were not rejected from want of value?—I think there were several rejected from want of value; that was an additional objection.

1538. Are you sure that was not the ground of objection?—Not the sole ground; for the Duke of Buccleuch's rent-books were not looked to afterwards, therefore they went on the value.

1539. Had those eight the requisite value?—I think not any of them.

1540. Did they claim again in 1834?—No, I think some of them did not claim; in 1834 some of them did.

1541. You stated that an addition to the value of their property had been made in the mean time?—Yes.

1542. Sir *William Rae.*] Was this a certain property granted on a building lease?—Yes.

1543. In some cases there had been new buildings erected upon them, and in others not?—Yes.

1544. *Chairman.*] By whom was the addition made to the value in the mean time?—I do not know.

1545. Was it made at the parties' own expense?—I was told that the Duke of Buccleuch furnished the wood, but I cannot tell from my own knowledge.

1546. Do you know any thing as to who went to the expense of that additional value?—No, I cannot say.

1547. Do you know whether the parties went to it themselves?—I cannot say.

1548. What are the circumstances in which those parties are?—Generally poor working people, labourers and shepherds.

1549. Were they in such circumstances as to be able to afford to make any addition to the value of their property?—I consider that some of them were not.

1550. Did you from that come to the conclusion that some other person must have made it for them?—Some other person must have assisted them, I think.

1551. Sir *William Rae.*] What was the extent of the ground property of those persons?—About a quarter of an acre.

1552. The additional value was by building some house upon that?—Either building, or improving what might have been built.

1553. Do not you think that those persons might have borrowed some money to enable them to improve?—I think they might.

1554. And you do not know that they had not borrowed money?—No, I do not.

1555. *Chairman.*] Do you think it likely that the persons borrowed that money?—I cannot say.

1556. You have no opinion about it?—I cannot say, indeed.

1557. Mr. *Divett.*] How is the Scotch law as to value; the tenement must be of the clear value of 10 *l.*; supposing a man has a house of the value of 10*l.*, and he mortgages it for 100*l.*, would that affect his vote, according to the Scotch law?—No, the vote is still good, though he borrowed up to the full value of the subject.

1558. Mr. *W. Campbell.*] The property must have been worth 10*l.* free of all charges

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charges upon it?—Free of all charges on the original title; it does not include any thing of that kind.

1559. *Chairman.*] How many new voters were registered in the year 1835?—Forty-seven proprietors, fifteen life-renters and seven tenants.

1560. How many of those proprietors were resident in the county?—Twenty-three.

1561. How many life-renters?—Thirteen.

1562. How many tenants?—Two.

1563. Were some of those cases of joint proprietors?—Yes, they were.

1564. There was a case of joint proprietorship, two Messrs. Bruce?—Yes.

1565. Who are they?—Mr. Thomas Bruce of Langlee; he lives in Edinburgh, and is deputy clerk of the sessions; and the other, Mr. Robert Bruce, his brother, is sheriff of Argyleshire.

1566. What was the nature of their qualification?—On houses in the neighbourhood of Selkirk.

1567. Sir *William Rae.*] How far is Langlee from the borders of the county of Selkirk?—Not a mile.

1568. Mr. Thomas Bruce resides there?—Occasionally, when he comes into the country.

1569. *Chairman.*] Do either of them reside in the county?—No.

1570. There were four joint proprietorships; four cases of the name of Bell?—Yes, William Bell, writer to the signet; Robert Bell, advocate; Benjamin Robert Bell, advocate; and Benjamin Bell, writer to the signet, all of Edinburgh.

1571. Are those gentlemen resident in the county?—No, none of them.

1572. Upon what were they inrolled?—Houses in Selkirk.

1573. As joint proprietors?—Yes.

1574. Were you agent in the transaction?—Yes.

1575. From whom was the qualification acquired?—There were three different parties.

1576. Were you agent for both buyer and seller?—Not in all the cases.

1577. Do you know the price that was paid for those properties?—Upwards of 700*l.*

1578. From whom were they acquired?—From Alexander Mercer, Mr. Blyth, Mr. Pringle of Clifton; two small houses from him.

1579. Was the price paid?—Yes, paid to the sellers.

1580. To all the sellers?—Yes.

1581. Did you pay it?—Yes; I believe not to Mr. Pringle, but to the other parties; I did not pay it to Mr. Pringle.

1582. What proportion of the subjects was bought from Mr. Pringle?—Two small houses, valued by joiners at 100*l.*

1583. The price of the whole subjects was 700*l.*?—Upwards of 700*l.*

1584. You did not pay Mr. Pringle's seventh part?—No.

1585. Was that paid in any way?—Messrs. Bell granted an obligation for it, and for part of the other money too which Mr. Pringle advanced.

1586. Did you make out that obligation?—Yes.

1587. Mr. Pringle lent part of the 600*l.* which was paid?—Yes.

1588. How much of the other 600*l.* did he lend?—I do not recollect the proportions; I should say the largest part; I think the obligation got from Messrs. Bell was well up to the whole value of the subject.

1589. In fact Mr. Pringle himself gave one subject which was worth 100*l.* and he lent nearly the whole of the remaining 600*l.*?—Yes.

1590. He took an obligation from the Messrs. Bell for it?—Yes.

1591. Was that in the shape of a bill?—In the shape of a personal bond.

1592. Did it bear interest?—Yes.

1593. What interest?—Four per cent.

1594. Is that in your possession or Mr. Pringle's?—It is in my possession, I think.

1595. Has that interest been paid?—Yes, it has.

1596. Sir *William Rae.*] Up to when?—I do not recollect the date precisely; I hold an authority from Messrs. Bell to draw the rents.

1597. *Chairman.*] And the rents go to meet the interest on the bill?—Yes.

1598. Who is the tenant of those subjects now?—There are a number of small tenements.

1599. Are they occupied by the persons that were the sellers?—I think Mercer is in the house at present, but that the others do not occupy.

1600. What

1600. What is the yearly amount of the rents?—Between 40*l.* and 50*l.* a year.

1601. Is that an exact equivalent for the bill?—No, there is more than meets the interest.

1602. To whom do you account for the surplus?—To Messrs. Bell.

1603. Sir *William Rae.*] The whole interest is paid?—It is paid up to the date of the last payment; but I do not recollect what that was.

1604. How much have you paid to Messrs. Bell of the surplus interest?—I have not paid them any thing.

1605. It is in your books?—Yes.

1606. Has any claim been made by them for any part of it?—No, only the original instructions I got from them, that I was to let the houses and to receive the rents; and I have been paying the burdens affecting the property; I have not yet had any settlement of accounts with Messrs. Bell.

1607. You paid the interest to Mr. Pringle of Clifton?—Yes.

1608. Who valued the property which Mr. Pringle sold?—The price was fixed by the report of tradesmen employed to put a fair value upon it between the parties.

1609. How was the price paid?—It was included in the obligation of Messrs. Bell.

1610. It was included in the personal bond?—Yes.

1611. Those properties being purchased from various individuals, was it all conveyed jointly to the same set of persons or separately?—Each person selling conveyed the subject to the whole four.

1612. How many sellers were there?—Four, I think.

1613. State the names of the four sellers?—Mr. Mercer, Mr. Pringle, Mr. Blyth and Mr. Robertson.

1614. Did you prepare those conveyances?—Yes.

1615. At whose expense?—Mutually, at the expense of the seller and the purchaser, I think.

1616. Is that the common way?—Yes.

1617. Was it by agreement?—No, I think there was no agreement; and where there is no agreement to the contrary, that is understood to be the practice in our county.

1618. To whose account did you put down the expense of those deeds?—To the Messrs. Bell, I think.

1619. Have they paid any part of it?—I am entitled to retain the expenses of titles when I account with them.

1620. They have not paid any part?—No.

1621. Have the sellers paid any part?—Yes.

1622. In cash?—I retained part of the price when I paid them the money.

1623. Viscount *Stormont.*] You stated that you had a mandate from Messrs. Bell to collect the rent; have you got that mandate here?—I have not.

1624. Can you produce it?—I can when I go home.

1625. *Chairman.*] Have you sent for it?—No.

1626. Sir *William Rae.*] How was the value of those houses in the Registration Court proved to be to the amount of 40*l.*?—I do not recollect positively, but I think very likely by the evidence of the tenant, which is the usual practice.

1627. Viscount *Stormont.*] You stated that the rent was between 40*l.* and 50*l.* and that the interest was four per cent. on 700*l.*; what has become of the difference between the rents and the interest; if you have retained it in your own hand, have you placed it to any person's account?—I placed it to the Messrs. Bell's account, against which I place the poor's rate, minister's stipend and other charges.

1628. Mr. *Maule.*] Have you a current account with the Messrs. Bell?—Yes.

1629. Sir *William Rae.*] On any other subject than this?—No.

1630. Have you ever settled that account at all?—No.

1631. It commenced with the transaction you have narrated?—Yes.

1632. Viscount *Stormont.*] Have they ever called for that account?—No.

1633. Have you ever sent it in?—No.

1634. Mr. *Maule.*] They might call for it at any moment?—Yes.

1635. Viscount *Stormont.*] You have never sent it in to them, nor taken any notice of it?—No.

1636. Who are Messrs. Bell, are they political agents?—William Bell connects himself, I think, with the Roxburgh politics.

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1637. Are they agents?—His estate lies in the county, and I know he interests himself in politics, but whether he is a paid agent I cannot say.

1638. Sir *William Rae.*] Was it, or not, agreed that those parties should pay no money when they got those votes?—I think there was no agreement upon the subject.

1639. Was there no understanding on the subject?—Not that I know of.

1640. Are not those persons wealthy men, able to pay 600*l.*?—I think they are so; I think they are wealthy men.

1641. How came they not to pay the money, then?—I suppose it was more convenient to them to apply the rents in paying the interest.

1642. *Chairman.*] Do you know Richard Robertson and William Robertson?—Yes.

1643. Are they joint proprietors?—Yes, they are joint proprietors in Selkirk.

1644. Where do they reside?—One in Selkirk and the other in London.

1645. From whom did they acquire their title?—From their mother.

1646. Was any price paid for it?—I believe there was a price fixed, but I cannot say whether it was paid.

1647. Did you make out the disposition?—Yes, I did; I think the price was nearly 500*l.*

1648. You do not know whether it was paid?—I do not think it was paid.

1649. Do you think there was any arrangement made about it?—I think the price was a burden on the property.

1650. Sir *William Rae.*] Was there a power of sale by the mother?—Yes, I think so.

1651. *Chairman.*] Was this property transferred by the mother solely for the purpose of giving her sons the franchise?—I think so.

1652. Viscount *Stormont.*] Do you know that?—No, but that is my opinion.

1653. *Chairman.*] Did you suggest the arrangement first of all?—No, it was a brother of those gentlemen who spoke to me on the subject, and gave me instructions.

1654. And he stated that he wished this arrangement to be entered into for the purpose of adding two votes to the liberal party?—I think he did.

1655. Are there any other cases of joint proprietorship in that year?—There are several joint proprietors in this way, that a person holds a subject equivalent to the value of two or three votes, and that person gives a life-rent for a part of it.

1656. Sir *William Rae.*] Is there a case of Alexander Mercer and his son?—Yes.

1657. Who is Alexander Mercer?—He is a tenant of some houses, and an innkeeper in Selkirk.

1658. Is either of them gardener to Mr. Pringle of Clifton?—His son William.

1659. What is the nature of the property?—Partly houses and partly land.

1660. From whom did he derive that?—From his father.

1661. That was his father's property before, and he joined his son in it?—Yes.

1662. Was there a case of John Haldane, a relation of yours?—Yes; he is my cousin, and brother to Walter Haldane.

1663. Are they owners of property?—Yes.

1664. What is the nature of that transaction?—They succeeded to it under their father; under a disposition.

1665. Where is the property situate?—It consists of a brewery, some houses in the town of Selkirk, and some land.

1666. That is a case of exchange between them and some other persons in Hawick?—Yes, they are proprietors of property in Selkirk, under which they are inrolled under their father's settlement; and they gave some part of their property in Roxburghshire in exchange with two other persons.

1667. Are those houses in Selkirk?—A brewery, and houses, and stable, and land.

1668. Did they grant life-rents upon part of this, to persons living in Hawick?—Yes.

1669. And those persons in Hawick gave them a life-rent on their property at Hawick?—Yes.

1670. Do either of those persons make any use of those respective properties?—They do not reside; as to making use, I do not know how they arranged that matter among themselves.

1671. Can

1671. Can you state in what manner your cousin enjoys his property in Hawick?—I know the way in which they manage in Selkirk; that the persons getting their life-rent, fix the value according to their age, so as to make them equivalent, and give them a qualification.

1672. *Chairman.*] Are there any other cases of joint property that year?—I have no note of any other but what are connected with life-rents.

1673. You state that there are some cases of proprietors under long leases, will you specify the first of those?—John Gray and Peter Kerr.

1674. On what are they inrolled?—Houses in Galashiels.

1675. From whom were those houses acquired?—From a merchant in Edinburgh, who held them before, of the name of Hay.

1676. Who acted as agent in that case?—I did.

1677. Viscount *Stormont.*] And acted for both parties?—Yes.

1678. *Chairman.*] What was the price fixed?—I think 320*l.* or 330*l.*

1679. Is that paid?—The whole price was paid to the seller.

1680. Who paid it?—I paid it for the purchasers, partly by their own money, and partly by loan that a client of mine made.

1681. In which you acted as agent?—Yes.

1682. What was the whole money?—Three hundred and twenty or three hundred and thirty pounds; I think the bond was for two hundred pounds.

1683. Sir *William Rae.*] Who was the client of yours who paid that money?—Mr. George Robertson.

1684. *Chairman.*] Does that bond bear interest?—Yes.

1685. Has interest been paid upon it? Yes.

1686. Who occupies the premises now?—There are a number of small tenements.

1687. Do you gather the rents?—Yes.

1688. By mandate?—Under authority of the buyers.

1689. Are the rents applied to the payment of the interest?—Yes.

1690. Do they meet the interest?—More than meet the interest.

1691. Have you paid over the surplus to any party?—No.

1692. You hold it in your hands?—Yes.

1693. Do you place it to the credit of any person?—I place it to the credit of Gray and Kerr.

1694. Viscount *Stormont.*] The whole of it?—I credit them with the whole receipts of the money I get from the property, and charge them with the disbursements of interest and all other charges that affect it.

1695. *Chairman.*] Was there any security given for the money raised on the bond?—The security of the property.

1696. Viscount *Stormont.*] Who holds it?—Robertson, I think.

1697. Does he hold it now?—Yes, I think so.

1698. Who is Mr. George Robertson?—He is a merchant in Selkirk.

1699. *Chairman.*] Do you know David Haldane and Hugh Lees?—Yes, tha was the case I mentioned in 1834.

1700. They were joint holders of a long lease?—Yes.

1701. They are inrolled on the same houses in Galashiels?—Yes.

1702. Is David Haldane any relation of yours?—He is my brother.

1703. From whom were those houses acquired?—From Hislop and Scott; there were two purchases.

1704. Who is Mr. Lees?—He is my brother-in-law, my partner.

1705. What was the price fixed for this purchase?—Nearly 300*l.*, I think.

1706. Was that paid?—Yes.

1707. Did those persons pay it themselves?—It was paid by Mr. Lees out of our company's cash.

1708. Mr. Lees paid for both shares?—Yes he did, and has taken an obligation from my brother for his portion.

1709. He holds that at this moment?—Yes, he does.

1710. Who occupies those premises now?—There are several tenants; it consists of small tenements.

1711. What rent is paid for them?—I d not recollect; it must exceed 20*l.*, but I do not recollect the precise amount.

1712. That was a purchase made for the purpose of procuring the franchise?—Yes, I think it was.

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1713. Do you know the case of Samuel Oliver, of Bush, and Samuel Oliver, of Whitehill?—Yes.

1714. Are they upon a long lease, jointly?—Yes.

1715. Where is the property on which they claim?—In the town of Galashiels.

1716. Do they reside in Selkirkshire?—No, they both reside in the county of Roxburgh.

1717. Is Mr. Samuel Oliver a keen partisan in the county of Roxburgh?—Yes.

1718. Who was the agent in this?—I think Mr. Curle, of Melrose, was his agent.

1719. Was it the political agent of the tory party in Selkirkshire?—Yes.

1720. From whom was the property acquired?—From Mr. Fish, the schoolmaster, of Galashiels.

1721. Do you know the price that was fixed?—I do not recollect precisely; I think within a trifle of 300 *l.*, but there were two purchases; they did not get the whole from Mr. Fish; there was a portion purchased of another person.

1722. Do those persons still hold as tenants?—I cannot say whether Mr. Fish occupied it or not; it is beside his house.

1723. Have you any means of knowing whether the price was paid?—No.

1724. Is there any other case of a long joint lease for years; was the case of Robert and John Thompson a case of long lease?—Yes.

1725. Where do they reside?—Mr. Robert Thompson is in Edinburgh, and his son is somewhere in Ireland.

1726. Who acted as agent in that case?—I did.

1727. Viscount *Stormont.*] You acted as agent for both parties?—Yes.

1728. *Chairman.*] Do you recollect the price?—I think rather less than 300 *l.*

1729. Was that paid?—Yes.

1730. By the parties themselves?—No, I advanced it for them.

1731. Do you hold any obligation from them for that sum?—Yes.

1732. Do you hold any security for it?—No; I consider their personal obligation very good.

1733. Does that bear interest?—Yes.

1734. Who occupies those subjects now?—There are a number of tenants.

1735. Do those persons who were the sellers of it occupy it?—No.

1736. Do you draw the rents?—Yes, we do; my partner and myself.

1737. By authority of those two gentlemen?—Yes.

1738. Do you apply the rents to meet the interest on the bill?—Yes.

1739. Was this property acquired solely for the franchise?—I think so.

1740. Viscount *Stormont.*] What is the rent?—The rent, at the time it was bought, was 18 *l.* or 20 *l.*; since that there has been an addition made, an outhouse built, and, I think, the rent now is 26 *l.* or 28 *l.*, since that addition was made to it.

1741. How much did the additions to the house cost?—Seventy or eighty pounds.

1742. Who supplied that?—I did; I got my obligation after the cost of that house was ascertained, and the obligation I hold includes both the first purchase and the additional sum I paid out for the improvement.

1743. Do you hold that bill now?—Yes.

1744. Did you furnish the money yourself, or was it a similar case to that you have stated before of an advance by Mr. Douglas?—It is due to myself personally.

1745. What became of the difference between the rent and the interest?—I am accountable to Messrs. Thompson for it.

1746. Have you ever accounted yet?—Not yet.

1747. Have they ever demanded that account?—Not yet.

1748. *Chairman.*] Are there any other cases of that kind?—I do not think there are any other joint cases.

1749. Are there any cases of joint tenancy inrolled in the year 1835?—I have no note of any.

1750. Viscount *Stormont.*] Did not you register any yourself; did not you register the provost of Peebles?—Yes, I registered Walter Thornburn and Robert Thornburn.

1751. For what subject was that?—On Caddonhead.

1752. Do

1752. Do either of them reside there?—No; it is a store farm, and they do not reside upon it.

1753. Are either of those farmers by profession?—Yes, Robert is.

1754. What is the profession of the Provost of Peebles?—He is a merchant.

1755. What kind of merchant?—I fancy a general merchant, like the other shopkeepers.

1756. A draper?—I am not aware what are his branches of business.

1757. Does he reside in the county?—No, he resides in Peebleshire.

1758. What distance is the town of Peebles from this farm?—Ten miles, perhaps.

1759. Do you know whether he has any interest in the farm?—I believe he has; I have seen him exercising acts of management, selling stock and so on; I have seen him in the markets, assisting in the markets, selling stock, and I have had occasion, in my capacity as bank agent, of seeing him using bills got for stock.

1760. Did you inrol any others that year?—I do not remember that I did.

1761. Was that the only case of joint tenancy that year?—To the best of my recollection it was.

1762. *Chairman.*] Will you go to the case of life-rents; you say there were 15 life-renters inrolled that year; was George Brochie, farmer, of Boshank, one of them?—Yes.

1763. From whom did he acquire his right?—From his brother.

1764. Did you act as agent in that transaction?—Yes.

1765. Do you know the price that was fixed?—Yes, 140*l.*

1766. Was that paid?—I do not know; I heard the two brothers arrange that the one who got the life-rent was to give a bill for it; but I do not know what arrangement they have made since; whether that has been done, or whether it has been paid, I do not know.

1767. Did you make the arrangement?—Yes.

1768. Did you make out the bill?—No.

1769. Do you know whether the money has been paid or a bill given for it?—No.

1770. Do you know Robert Ballantine, carrier, of Selkirk?—Yes.

1771. Is he a life-renter?—He is.

1772. From whom did he acquire his right?—From his nephew.

1773. Did you act as the agent in that transaction?—Yes.

1774. Do you know the price of that?—I do not recollect the price.

1775. Can you recollect whether the price was paid?—He granted a bill for it.

1776. For the whole price?—Yes.

1777. Viscount *Stormont.*] What was the description of property?—Houses.

1778. Does he draw the rents?—I do not know.

1779. Who are the tenants?—I believe the nephew occupies as an inn the subjects this man's right extends over.

1780. Is he in the administration of the property?—I think the nephew occupies the whole of it.

1781. *Chairman.*] The occupation has never been changed, in fact?—I think not.

1782. Sir *William Rae.*] If a bill was given, in whose possession is it?—In the hands of the nephew.

1783. *Chairman.*] Do you know Francis Ballantyne, merchant, of Hawick?—Yes.

1784. Is he a life-renter?—Yes.

1785. From whom did he acquire his right?—From John Gray.

1786. Did you act as agent in that transaction?—No; I think that was completed at Hawick.

1787. Who did act as agent?—Mr. Wilson, at Hawick.

1788. Is Mr. Wilson Ballantyne's agent?—He acted as the agent in this transaction.

1789. You have nothing to do with it?—No.

1790. Viscount *Stormont.*] Is he a political agent?—Yes, he is agent for the liberal party in the county of Roxburgh.

1791. Do you know the price?—It was an exchange of life-rents.

1792. *Chairman.*] To what county does Mr. Gray belong?—He belongs to Selkirk, and Mr. Ballantyne to Roxburghshire.

 1793. Did

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1793. Did Mr. Gray give Mr. Ballantyne a life-rent in Roxburghshire in return for this life-rent in Selkirkshire?—Yes.

1794. Was there any money of any kind passed between them?—Yes, the value of the life-rent was fixed according to the ages of the parties; Gray was the oldest man, and I think he got the difference from Ballantyne.

1795. Do you recollect the amount of the difference?—No, I do not.

1796. Viscount *Stormont.*] Were you the agent on either side?—No; I know the cases from Gray's information, and from Francis Ballantyne at the Registration Court.

1797. *Chairman.*] When Mr. Ballantyne acquired his life-rent from Mr. Gray, did he come into occupation of the subject?—No, Gray remained in the occupation.

1798. Did he get a lease from Mr. Ballantyne?—Yes.

1799. He gave Mr. Ballantyne a life-rent disposition, and got back a life-rent lease?—Yes.

1800. Did the same transaction take place between them, in Roxburghshire?—Yes.

1801. Sir *William Rae.*] What was the nature of the subject?—Houses.

1802. Houses in a respectable neighbourhood, occupied by Gray?—No, Gray did not occupy it himself.

1803. *Chairman.*] Neither party vacated the premises?—Gray did not; I do not know as to Ballantyne.

1804. Viscount *Stormont.*] Were there leases granted of the same endurance?—Yes.

1805. Can you produce any of those leases?—No; I have some of them at home, I dare say.

1806. *Chairman.*] You were not agent for either of those parties?—Not in executing the deeds.

1807. Have you any of those deeds in your possession, either Mr. Ballantyne's or Mr. Gray's?—No; I do not think I have.

1808. Do you know Henry Ewen, manufacturer, in Hawick?—Yes.

1809. Is he a life-renter?—Yes.

1810. How did he acquire his life-rent?—He acquired it from John Haldane, in Selkirk.

1811. Is John Haldane a relation of yours?—He is a cousin.

1812. Was this an exchanged life-rent?—Yes.

1813. Mr. Ewen lives in Roxburgh, and Mr. Haldane in Selkirkshire?—Yes.

1814. What was the nature of the subject exchanged between them?—Houses in both cases.

1815. Was the occupation changed?—No.

1816. Did each continue to occupy the house when he had given the life-rent to the other?—They had back life-rent leases; I believe John Haldane continued personally to occupy; I do not know whether Ewen occupied, or his tenants.

1817. Did you make out the deeds?—Yes.

1818. You have them in your possession?—I think I have them at home, but I am not sure whether Ewen has his own titles.

1819. Have you your cousin's titles?—Yes.

1820. Can you produce them?—Yes, I could.

1821. Was there any money paid between those two parties?—Yes.

1822. The difference between the value of their lives?—Yes.

1823. Viscount *Stormont.*] What sum?—I think their ages are very nearly alike, the one 26 or 27, the other two or three years older; the difference paid according to the annuity tables at that age was about three or three and a half per cent.; six or eight pounds was, I think, the ascertained difference.

1824. Sir *William Rae.*] Were any of those objected to before the sheriff?—Yes.

1825. On what ground?—I think there was a notice given to all the people claiming under these titles to attend the court, and some of them were examined upon oath, and in some cases the parties granting the deeds were examined in the same way; I think there were no other witnesses.

1826. To what was the examination conducted; did they take into the account the grant or the qualification?—Yes, both were taken into view.

1827. They were sustained?—Yes.

1828. Did the sheriff give the grounds of his opinion?—He stated that the machinery

machinery employed in making these votes appeared to him to bring them within the statute, but that they were very improper votes; I think the sheriff of Selkirkshire expressed some such opinion as that.

1829. *Chairman.*] Do you know that these kind of votes have been generally admitted by the sheriffs of Scotland?—Yes.

1830. Lord *Stanley.*] Have you sufficient knowledge with regard to the practice throughout Scotland, to speak to that?—No; the sheriffs of the surrounding counties, Peebles, Mid Lothian and Roxburgh have, and I believe the same thing has been done in Linlithgow; it has been prevailing in the counties about where I live, I know.

1831. *Chairman.*] You have heard that subject discussed by the agents in different parts of Scotland?—Yes.

1832. And you have heard it expressed as the universal opinion that they should be inrolled?—I have heard that they have been inrolled in various places by the sheriffs.

1833. Do you know of any exception?—No, I do not.

1834. Do you know the case of Robert Fraser, merchant, of Hawick?—Yes.

1835. Was that the case of an exchanged life-rent?—Yes.

1836. Was that case similar to those you have stated?—Yes.

1837. From whom did he obtain his right?—From William Muir, hosier, in Selkirk; he gave a life-rent to Fraser, and Fraser gave him back a life-rent in Hawick.

1838. Was the whole transaction precisely similar to that you have just described?—Precisely the same, except that Muir and Fraser were of the same age, and there was no money passed.

1839. Viscount *Stormont.*] Do they each occupy their own house?—Muir occupies his house; I do not know as to the other.

1840. Sir *William Rae.*] The other gave him a lease?—Muir conveys half the property he occupies by a life-rent disposition, and Fraser gives him a lease back of the same subjects.

1841. Without any money passing?—Yes.

1842. *Chairman.*] Do you know Charles Williamson, merchant, at Hawick?—Yes.

1843. Is he a life-renter?—Yes.

1844. From whom did he acquire his life-rent?—John Robertson, merchant, Selkirk.

1845. Was that precisely similar to the last-mentioned case?—Precisely similar to the case of Ewen; there was a small difference of price and value.

1846. Viscount *Stormont.*] Did they each reside in their own house?—Robertson did; I cannot say to the occupancy of the house in Roxburgh.

1847. *Chairman.*] Were you agent in all these transactions?—Yes.

1848. Do you know Walter Wilson, of Hawick?—Yes.

1849. Was his a case of exchanged life-rent?—Yes.

1850. From whom did he acquire it?—John Blackall, of Selkirk.

1851. Was that the same as the other?—Yes.

1852. Do you know John Wilson, manufacturer, at Hawick?—Yes.

1853. Was that a case of exchanged life-rent?—Yes.

1854. From whom did he acquire?—Walter Haldane, brewer, of Selkirk.

1855. Was that the same as the other?—Yes.

1856. Viscount *Stormont.*] In those cases, was there a difference paid?—Yes.

1857. *Chairman.*] Was there always a difference paid where there was a difference in the ages of the parties, calculated as you before stated?—Yes.

1858. Viscount *Stormont.*] Was Walter Wilson inrolled?—Yes, I have him marked as inrolled.

1859. Mr. *Ferguson.*] They have no beneficial interest; they have received no rent?—Taking it in connexion with the right they acquire in the next county, the rents are precisely the same.

1860. They grant no receipts and take no money?—They grant receipts, I believe.

1861. It is matter of form?—I consider it so; there is no money passes.

1862. It is a colourable transaction?—Yes, I think it is.

1863. *Chairman.*] Do you know Lord Melgund?—Yes.

1864. Is he a life-renter?—Yes.

1865. From whom did he acquire his life-rent?—From his father.

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1866. Did you make out his disposition?—No; it was Lord Minto's agents in Edinburgh, Todd & Romanis, who did it.

1867. What was the nature of that conveyance; was there any money consideration?—No, it was a provision out of his estate, in the county of Selkirk; it was a gratuitous deed from Lord Minto to his son.

1868. What may be the value of that?—Upwards of 200 *l.* a year.

1869. Do you know James Robertson, of Glasgow?—Yes.

1870. Is he inrolled as a life-renter?—Yes.

1871. From whom did he acquire his life-rent?—He acquired the property from his nephew, I believe it was.

1872. Do you know how he acquired it?—I think, so far as I recollect, he is also the fiar of the subject.

1873. Did it appear to be a fair transaction?—I cannot say; I do not know any thing about it.

1874. You were not the agent?—No.

1875. Who acted as the agent in the transaction?—I think the deed was written by Mr. Lang, the sheriff's clerk.

1876. Do you know Alexander Robertson, in Selkirk?—Yes.

1877. From whom did he acquire his life-rent?—From his brother.

1878. How did he acquire it?—By the brother granting a life-rent in his favour.

1879. Gratuitously, or for value?—I think the deed bore, upon the face of it, for a sum of money, and there was to be an obligation granted for it.

1880. Did you act as agent?—I wrote the disposition.

1881. Do you hold the bond?—No.

1882. What was the amount of the obligation?—I do not think that ever I saw it; it was to be fixed according to the amount, and his age, by the annuity tables.

1883. Viscount *Stormont.*] What was the value of the property?—I should say from 11 *l.* to 12 *l.* a year; it was proven in the court to the extent of 10*l.*

1884. What description of property?—House property.

1885. Do you collect the rents?—No.

1886. Sir *William Rae.*] Was there a life-rent, claimed by the Lord Provost of Edinburgh, rejected that year?—Yes.

1887. What did he claim?—He claimed a life-rent of a tenth part of the farm of Fernleigh.

1888. To whom does Fernleigh belong?—To Mr. Pringle, of Clifton.

1889. Were there other nine persons rejected at the same time?—Yes.

1890. Who were they?—Peter Crooks, writer to the signet, Edinburgh; John Goodfellow, merchant, Hawick; William Goodfellow, baker, Hawick; John Hislop, merchant, Hawick; Andrew Miller, merchant, Edinburgh; James Spittal, merchant, Edinburgh; Andrew Ewen, merchant, Hawick; William Wemys, deputy commissary-general, Edinburgh; Peter Wilson, manufacturer, Hawick; Walter Wilson, baker, Hawick.

1891. Mr. Spittal is Lord Provost of Edinburgh?—Yes.

1892. Two of the persons, called Miller and Crooks, are two of the magistrates of Edinburgh, are they not?—Yes.

1893. Are any of those persons resident in Selkirk?—None.

1894. What was the nature of the right?—A life-rent disposition by Mr. Pringle over the farm of Fernleigh.

1895. What was the rent of that?—The rent was 170*l.*, or very near it; 167*l.* or 170*l.*

1896. What was the nature of the right they attained?—A joint disposition to all of them.

1897. A joint disposition to all of them to that farm?—Yes.

1898. They were rejected the last year?—Yes.

1899. On what ground?—Principally on the ground of the want of intimation to the tenant.

1900. Principally?—I think that was the ruling objection.

1901. Was there any other objection?—There was a good deal of discussion in regard to the difference between the rents payable by the tenant in possession, and the annuities on the rents payable to the life-renters, the one exceeding the other by a considerable sum; but I do not recollect that the court decided upon that.

1902. Was there any back tack granted by those parties on this life-rent being obtained?—Yes.

1903. They

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1903. They all granted a back tack to Mr. Pringle, of Clifton?—Yes.

1904. The farm that he conveyed to them by life-rent, paying 167 *l.* a year, how much rent did he agree to pay them for that farm?—One hundred guineas.

1905. He had 60 *l.* more than they received?—Yes.

1906. Was that a life-rent lease?—Yes.

1907. Was this intimated to the tenant?—No; I think the claims were thrown out of the Appeal Court, because it was not intimated.

1908. Mr. Pringle, of Clifton, has since continued to draw the rent from the tenant?—The tenant has paid me the 100 guineas as agent for those life-rent proprietors, and which I have paid to them.

1909. What became of the 67 *l.*?—I believe Mr. Pringle received that; I just got the proportion to which those persons were entitled.

1910. What did they pay for this life-rent?—The proportion payable by each was fixed by consulting annuity tables as to what they ought to pay for a right yielding them 10 *l.* a year.

1911. Viscount *Stormont.*] You were agent for both parties?—Yes, I prepared the deeds; a gentleman in Edinburgh was applied to by Mr. Paterson in Edinburgh; I had no personal communication with him, but taking his instructions and the instructions of the other parties with whom I was in communication, I prepared the deeds.

1912. Did Mr. Paterson act as agent for those ten gentlemen?—With those living in Edinburgh; he communicated with me in their names.

1913. Sir *William Rae.*] Have those paid?—The whole, except one.

1914. How did they pay?—In cash.

1915. Did they pay soon after the date of the deeds?—Yes, I think within a fortnight of the date of the deeds.

1916. Did you see them personally?—Yes.

1917. Did you go to them, or did they come to you?—I got payment of the Edinburgh gentlemen in Edinburgh, from the parties; and I was at Hawick, and got payment from all of them there, I think, except one, and that was remitted afterwards.

1918. You got payment from Wilson?—Yes; he assisted me in getting payment from the different parties.

1919. Who is the one who has not paid?—Walter Wilson Baker.

1920. Have you any obligation for that?—Mr. Pringle holds the obligation for the price for which he acquired the life-rent right.

1921. *Chairman.*] Is it a bill?—No, I think it is in the nature of an obligation.

1922. Does that bear interest?—Yes.

1923. What is the amount of interest?—I do not recollect.

1924. Sir *William Rae.*] Do you pay this individual, Walter Wilson, his share of the 100 *l.*?—I have not paid him at present.

1925. How does that stand?—I will account for it; I do not know whether Mr. Pringle expects to retain the interest for that; if so, I shall give him the difference.

1926. *Chairman.*] To whom do you hold yourself accountable for this?—To Wilson.

1927. Had you any instructions from him to pay it to the account of interest?—No, I have had no instructions from him since I got the obligation.

1928. Sir *William Rae.*] They gave intimation, and were all inrolled the year following?—Yes.

1929. *Chairman.*] Were there any other branches of life-rent claimants rejected that year?—Yes, there was another of eight persons.

1930. Did you act as agent in that also?—Yes.

1931. Will you state their names?—Dr. Walter Adam, Edinburgh; James Anderson, leather merchant, Edinburgh; Adam Black, bookseller, Edinburgh; George Dare, writer to the signet; John B. Gracey, writer to the signet; Maurice Lothian, writer, Edinburgh; John Lothian, writer, Edinburgh; J. W. Mackenzie, writer to the signet.

1932. What were the grounds of their rejection?—Partly a want of intimation, and an objection taken as to value, mixed up with the furniture that was in the house; it had been let at a slump rent by the previous proprietor.

1933. Was the want of intimation proved?—Yes, the tenant in possession was not aware of the sale for months after it had been completed.

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1934. Were they rejected on that ground?—They were rejected partly upon that ground and partly upon the score of value.

1935. From whom did they acquire that right?—From Mr. Pringle, of Clifton.

1936. What was the price fixed for their purchase?—The price fixed was just in the same way as the price of any other life-rents.

1937. Do you remember what the sum was?—No, I do not.

1938. They got a joint life-rent disposition from Mr. Pringle?—Yes.

1939. Did they give back a life-rent lease to Mr. Pringle?—Yes.

1940. Did they pay the price of the life-rents?—Yes.

1941. Did they pay it in cash?—Yes.

1942. All of them?—Yes.

1943. What was the subject on which they held their qualification?—The mansion-house of Vuefield-park, and garden and offices.

1944. Is there a tenant occupying them?—Yes.

1945. What rent does he pay?—He paid 100*l.* a year, but that included the use of some furniture that belonged to the previous proprietor.

1946. Do you receive the rents for the purchaser?—Yes.

1947. What is the amount of rent paid by Mr. Pringle to them?—Eighty-four pounds.

1948. You account to them for the rent which is paid by the tenant?—Yes, I have paid them the rent.

1949. You also paid to them the rent paid by Mr. Pringle?—I have got the rent payable by the tenant in possession, and have paid the life-renters their 84*l.* out of it, and there has been no settlement in regard to the proportion of rent payable to the sellers, trustees, Mr. Pringle, and the other gentlemen.

1950. Viscount *Stormont.*] Who were the other trustees?—Mr. Pringle, of Whitebank, and Mr. Ballantine, and I think three or four others.

1951. Sir *William Rae.*] Is it a furnished house?—Yes.

1952. How much was the furniture valued at?—I think it was valued at a variety of different sums, 200*l.* to 300*l.*, and 300*l.* to 400*l.*

1953. That did not leave 10*l.* to each individual after that deduction?—There was a considerable difference in the evidence; and I conceive they went upon that ground in part, and the want of intimation to the tenant.

1954. None of the parties you have mentioned resided in Selkirkshire?—No.

1955. Are they not very keen political characters?—I consider them all engaged in the liberal party.

1956. You consider the same observation applicable to the former life-renters you spoke of?—Yes, I do.

1957. *Chairman.*] Was there a batch of life-renters whose claims were put in by Mr. Horne in that year, and rejected?—I do not think there was.

1958. Do you know William Clerk, of Longhaugh?—Yes, I do.

1959. Did he claim as a life-renter that year?—Not as a life-rent proprietor; he claimed as a life-rent tenant.

1960. Along with any others?—There were five claims standing under the same circumstances rejected that year, life-rent tenants.

1961. Lord *Stanley.*] What is the meaning of life-rent tenant?—Under long leases, it has been held by the Registration Court, that a person can acquire a life-rent interest in a lease, by assigning the lease for the whole term, or for the term of the natural life of the assignee; that has been held as a good ground for qualification.

1962. Are you to be understood that it is held that a lease granted for 57 years, or for a life short of the lease itself, granted on a lease for 57 years, would be held to convey a life-rent to a person taking under that lease?—Yes.

1963. Even although if the under-tenant should live beyond the period of 57 years, he in that case would forfeit his interest?—Yes, he would be admitted on the roll by such a title, but at the expiry of the lease he would be struck off.

1964. Mr. *Divett.*] Do you mean to say a number of years is equivalent to a life-rent?—I will explain; I can mention a case that was admitted to the roll; Mr. Scott, of Gallow, executed a deed, assigning a long lease to Sir Walter Scott, of Abbotsford; a lease of 99 years, commencing in 1792 or 1793; he assigned that to Sir Walter Scott for his lifetime; Sir Walter Scott claimed to be admitted as tenant under that long lease; the sheriff of Selkirkshire held he was entitled to be inrolled as tenant, though there might be only a year or two remaining until the expiration of the term; he either had a 57 years' lease, which admitted him to be

inrolled,

inrolled, or he had a life-rent, which under alternative right he put him on the roll.

1965. Mr. *Walter Campbell.*] Did the person who gave Sir Walter Scott that life-interest remain inrolled in the county?—Yes, but not upon the subject; he could not be upon that subject.

1966. Sir *William Rae.*] At the expiry of that 99 years he would be struck off?—I conceive so.

1967. Sir *Thomas Fremantle.*] Supposing 98 years had elapsed, do you conceive by the law of Scotland the holder of that lease would be entitled to be registered as a life-renter?—Yes; for that year; I understood the sheriff of Selkirkshire so to rule.

1968. What was the lease to Sir Walter Scott?—It was the assignment of a lease; the principal lease was for 99 years to Mr. Scott; then Mr. Scott assigned it to Sir Walter for his life.

1969. Mr. *Divett.*] What is the shortest term of years, according to the Scotch law, which they would consider equivalent to a life lease?—Fifty-seven years is the shortest specified term of indurance of a lease to entitle a person to be registered under the qualification clause.

1970. Mr. *Walter Campbell.*] Is it or not the case that it is held in the Registration Courts that a person holding a 57 years' lease, though 20 or 30 years of that lease have expired, has a right of assigning the lease he then holds to another party, and that that party, though in reality he would only enjoy the benefit of that lease for 20 or 30 years, would still enjoy the benefit of being registered for the remainder of that lease?—Yes; he would be registered as tenant for the time that lease had to run.

1971. *Chairman.*] You speak of the decision of the Registration Court, do you not?—I do; that case of Sir Walter Scott was appealed, and the appeal sheriff allowed him to remain on the roll.

1972. Do you speak of the practice of the law courts of Scotland generally?—Of the Registration Courts.

1973. Were there five individuals who claimed as joint life-renters?—No, they were five individual cases, I think.

1974. William Clark got his life-rent conveyance from George Craig?—Yes.

1975. Of what?—Some houses in Galashiels.

1976. Was he objected to?—He was.

1977. Was he rejected?—Yes.

1978. On what ground?—Principally, I think, because his claim was not supported by the terms of his title; the title and the claim were not in connexion.

1979. Was George Craig the leaseholder of the subjects?—Yes.

1980. On a life-rent lease?—On a 99 years' lease.

1981. He gave over a life-rent of the property to William Clark?—Yes.

1982. Was he objected to on the ground that he had not the power of granting a life-rent out of a property of which he had a 99 years' lease?—Yes, we objected that he could not hold the title in that way.

1983. Was that objection sustained?—That was overruled in Sir Walter Scott's case; the principle of the decision in that case was, that the claim and the title produced under it did not correspond; the other objection was argued before the sheriff, but I do not think it came to be the ground of decision.

1984. Did John David Hope, of Leith, wine-merchant, put in a similar claim?—Yes.

1985. A qualification acquired from the same person?—Yes.

1986. Was that rejected on the same grounds?—Yes.

1987. Did William Munro, of the 79th regiment, put in a similar claim?—Yes.

1988. Was he rejected on the same grounds?—Yes.

1989. Did David Munro, residing at Craig Lockhart, put in a similar claim?—Yes.

1990. Did Archibald Gibson, of Ludhope, put in a similar claim?—Yes.

1991. Were those claims all prepared by Mr. Horne?—The deeds were prepared by Mr. Horne, and I think the claims were supported in the Registration Court by Mr. Craig; I think he was the agent for the parties.

1992. The conveyances were all from Mr. Craig?—Yes.

1993. Viscount *Stormont.*] Are you sure that the conveyances were prepared by Mr. Horne?—Yes, I examined the titles, and that is my belief.

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1994. *Chairman.*] Do you know any thing of the terms of the purchase?—No, I do not.

1995. Sir *Thomas Fremantle.*] Can you explain to the Committee the grounds on which those votes were rejected?—They were rejected by the sheriff, I think, on the ground that the wording and the claims sent in by the parties did not correspond.

1996. It was a mere formal objection, without going into the principle?—It was argued before the sheriff, but I think it was decided on the ground of the title and the claim not supporting each other.

1997. For aught you know the votes might have been perfectly good votes; the tenure on which they held the property might have been a *bonâ fide* legal qualification?—They might have been admitted to the roll on the same principle that was laid down by the sheriff in Sir Walter Scott's case.

1998. Viscount *Stormont.*] You claimed for 33 life-renters in that year on behalf of Mr. Pringle of Clifton's party?—I did not give in claims for all the parties on the roll; I gave no claim for some who were rejected.

1999. Were any of them put in by the other party?—James Robertson of Glasgow, and Sir Walter Scott; I think those were the only two put in by the other party.

2000. There was no batch of votes put in by the other party that year?—Not inrolled; I consider those five to have been a batch in the same way.

2001. Not on one property?—They were different deeds, but they were all granted by the same person.

2002. *Chairman.*] Will you turn to the year 1836; what was the number of claimants inrolled in that year?—One hundred and forty-six.

2003. Will you separate those?—Fifty-one proprietors, eighty-nine life-renters and six tenants.

2004. How many of those were resident in the county?—Thirty-one proprietors non-resident, eighty-seven life-renters and one tenant.

2005. Does that table before you include all of which you have given an account?—It does.

2006. Was there any case of joint proprietors inrolled in that year?—Yes, the first case I have here is James Douglas Dove, of London; half only of the subject, the other half was inrolled before.

2007. Who was the other?—James Gray.

2008. By whom was he inrolled?—By me.

2009. From whom did he get his qualification?—From Mr. Borthwick, of Crook's Town, as trustee for a family selling.

2010. Do you know the price paid for it?—It was about 460*l.*

2011. What was the subject?—Houses.

2012. Was that price paid?—It was partly paid by the proprietors, and partly borrowed.

2013. How much of it was paid?—I think the price was between 460*l.* and 470*l.*, and that the odd money was paid, and a bond given for 400*l.*

2014. Is Mr. Douglas Dove any relation to Mr. Douglas, of whom we have heard?—Yes, I think he is his nephew.

2015. To whom was the bond given for the 400*l.*?—To Miss Pringle.

2016. Who is Miss Pringle?—Aunt to Mr. Pringle, of Clifton.

2017. Does that bond bear interest?—Yes.

2018. What rate of interest?—Four per cent.

2019. Who occupies those premises now?—Gray, the other proprietor, occupies part, and the remainder is occupied by the tenants.

2020. Do you receive the rents for Mr. Douglas Dove?—Mr. Gray is in possession of part of the subject, and takes the charge of the management, and he has several times given me sums of money, which I apply in payment of the interest to Miss Pringle.

2021. You take no charge of the rents?—No, I do not think any rents have been paid to me; that they rest with Gray.

2022. Have you any authority to receive the rents?—I had before Gray took possession for the same rent; but Gray has been in possession during the last year.

2023. Viscount *Stormont.*] Under written or verbal authority?—I had no written authority; it was under verbal authority; Gray lives in the town of Selkirk, and I see him often, and I have often talked over the matter with him, and

and whether the tenants in possession were proper tenants; I have had no personal communication with Mr. Dove.

2024. Sir *William Rae.*] What is the date of the sale?--I think Gray was inrolled in 1834: it will be probably in 1834 or 1835.

2025. Who was the tenant at that time?—There were a variety of tenants; Mr. Hogg, the person to whom it had previously belonged, was in possession of a part of it.

2026. Did those parties pay their rent to you?—Mr. Hogg, and the other tenants, I think, all paid me either a year's rent, or probably a year and a half's rent, and it has been a fixed thing with Gray since he entered personally into possession.

2027. How came the bond to be given to Miss Pringle?—I do not know any other reason but that she wished to get a higher rate of interest than bank interest.

2028. She lent the money?—Yes.

2029. Who were the trustees?—They were the trustees for the heritable creditors; the original proprietor was Mr. Hogg.

2030. Miss Pringle lent the money?—Yes.

2031. Viscount *Stormont.*] Had you authority from Mr. Douglas Dove to collect the rents?—No, I had no authority from him, but from Mr. Douglas.

2032. Are you agent for Miss Pringle?—Not in any other matters; I drew the bond for Miss Pringle, and after it was drawn I sent it to her.

2033. Sir *Thomas Fremantle.*] Has Miss Pringle any other security but the bond?—It is a heritable bond.

2034. What is the annual value of the property?—Five and twenty or seven and twenty pounds, I should think.

2035. At what rate does the bond bear interest?—Four per cent.

2036. Viscount *Stormont.*] You do not know whether Mr. Douglas Dove has received any rents at all?—I do not know further than that the rents I have got have been credited to the property, and interest is paid.

2037. Do you know whether Miss Pringle receives the four per cent. interest?—Yes, I pay it myself.

2038. How often?—Every year.

2039. From what fund do you pay the interest?—From the rents.

2040. Then you do receive the rent?—Gray manages the property, but he has given me many rents to enable me to pay the interest; the money coming into my hands has been charged with the interest payable to Miss Pringle.

2041. Do you receive the whole of the rent from Mr. Gray?—Mr. Park is a person I employ in Selkirk to manage small subjects for me; I believe the principal management is in Mr. Gray.

2042. Do you receive those 28*l.*?—Gray does not pay the whole, he pays only the interest upon his half of the bond.

2043. Who receives the rent?—I had no communication with the tenant personally; but Douglas Dove's half of the rent was payable to me, and Gray's proportion of the interest, and I pay Miss Pringle the interest out of that.

2044. What has become of the surplus?—I have had no communication with Mr. Douglas Dove upon the subject of that.

2045. Were you desired to give an account of it?—I was, by his friend.

2046. Lord *Stanley.*] Can you tell the Committee generally how many cases of this kind there are in which you receive the difference between rent and interest from various parties with whom you have had any other transactions, none of whom have ever asked you for a settlement?—I can give the number on consideration; I dare say I could endeavour to recollect it.

2047. How many persons are there for whom you receive the balance between rent and interest with whom you have had no other transactions whatever, and from whom you have had no claim for a settlement of accounts?—I cannot state that at the moment.

2048. *Chairman.*] There are a considerable number of those?—Yes, there are; but I would not condescend on the specific number without consideration.

2049. You admit there is a very considerable number for whom you have transacted business in that manner?—Yes.

2050. Sir *Thomas Fremantle.*] Who advanced the 60*l.* beyond the amount of the bond?—Mr. Gray advanced his half of it, and Mr. Douglas advanced the other half for his nephew.

2051. Did Mr. Douglas Dove sign the bond?—Yes.

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2052. Sir *William Rae.*] Deducting the interest, there was just 12*l.* a year for those qualifications?—The interest is not deducted by the Scotch law; that is the balance they would have to put into their pockets.

2053. Sir *Thomas Fremantle.*] Have there been any repairs on those houses?—There were small repairs.

2054. Then the 28*l.* would not be clear every year?—No.

2055. *Chairman.*] Is there some particular gentlemen in the liberal party to whom you looked for instructions, and for whom you consider yourself as acting?—I consider myself generally as acting for the liberal party, and for Mr. Pringle.

2056. Do you consider Mr. Pringle, generally, the party for whom you attend? have taken instructions from him.

2057. Do you consider yourself the agent for him, as representing the liberal party?— Yes.

2058. The party for whom you act were aware of the examination you were to undergo here?—Yes.

2059. Had they any understanding of the information with which you were to supply the Committee on these transactions?—None.

2060. You had no instructions whether you should be open in your communications or otherwise?—I had no communication with any body, except as to the coming to be examined, except with Mr. Pringle; we talked over the matter; he said that I should be prepared to answer all questions put to me.

2061. Mr. Pringle requested you to be fully open in all your communications upon those subjects?—Yes.

2062. Were there any other cases of joint proprietorship that year?—Captain Elliott, Royal Navy.

2063. With whom was he joint proprietor?—His father, Admiral Elliott.

2064. How did he acquire his property?—By a gratuitous disposition from his father.

2065. Is he inrolled as joint proprietor with his father?—Yes.

2066. What is the subject?—Houses principally, and a garden and orchard ground.

2067. You acted as agent in the transaction?—Yes, I prepared the deed.

2068. What is the value of the subject?—Between 20*l.* and 30*l.* a year; beyond 20*l.*

2069. Was that a conveyance made solely for the purpose of acquiring the franchise?—I believe so.

2070. Sir *Thomas Fremantle.*] What is the tenure; did he hold it in fee?—Yes.

2071. Viscount *Stormont.*] His father was registered in 1834?—He was previously registered upon that property.

2072. Did he split the property in favour of his son?—Yes, he acquired it sometime in 1833.

2073. Has he any other property in the county?—Not that I am aware of.

2074. *Chairman.*] Was there any other case of joint property that year?—Gilbert Elliott; that is the case in connexion with Sir William Scott and Sir Daniel Sandford.

2075. Gilbert Elliott was substituted for Sir Daniel Sandford?—Yes.

2076. Sir *William Rae.*] Do you know what he paid for his share?—I do not know the price, but it was the same that Sir Daniel paid himself.

2077. How was it paid?—It was arranged by Sir William Scott, who relieved Sir Daniel by making the disposition to Mr. Elliott.

2078. *Chairman.*] Had Sir William Scott previously taken a bill from Sir Daniel Sandford?—I do not know.

2079. Mr. *Maule.*] Could Sir Daniel Sandford have retained possession of the qualification if he had been so pleased?—Yes, decidedly.

2080. *Chairman.*] Had he paid the price for it?—I do not know; it was Sir William Scott paid the whole price at the time the subject was acquired.

2081. Do you know whether or not each held an obligation from the other?—I do not know.

2082. Do you know that Sir Daniel gave it up?—I am not sure, but I think that Sir William Scott told me that Sir Daniel did not wish to hold it, as he could not exercise the vote agreeably with his principles.

2083. Lord *Stanley.*] This vote was put on the footing of his having a political feeling one way; and when it was found it would have a political bearing in another way, the person who took it felt himself bound in honour to give it up; he felt he could

could not in honour hold it, the qualification having been conveyed to him in expectation of his supporting another party?—I think so, that it was conveyed to him under that expectation.

2084. Sir *William Rae.*] Had you any communication with Sir Daniel about striking him off the roll?—No.

2085. He gave you instructions to put him on the roll?—Yes.

2086. *Chairman.*] Will you state the next case?—Lord Maitland and Sir Andrew Maitland.

2087. Did they become joint proprietors of a subject?—Yes, some houses near Selkirk.

2088. Mr. *Maule.*] Have they any other property in the county of Selkirk?—None, I believe.

2089. *Chairman.*] From whom did they acquire the property?—A person of the name of Dryden.

2090. Who acted as agent?—I saw the deeds, but I cannot say; I think it was Mr. Patten.

2091. You know nothing of the terms of the purchase?—I saw the deed, and examined it at the registration.

2092. Sir *William Rae.*] Was the claim objected to?—Yes.

2093. On what ground?—Both of title and value; there was a good deal of discussion about value.

2094. Viscount *Stormont.*] Was this paid for?—I do not know.

2095. *Chairman.*] Was there any other case?—There was the case of Charles Scott, of Milsington; he was inrolled as joint proprietor, with another; Mr. Fair, I think, was the other proprietor's name.

2096. Who acted as agent there?—Mr. Patten.

2097. Is he a political agent?—Yes.

2098. For which party?—For the tory party.

2099. Viscount *Stormont.*] Was he agent for both parties?—So far as I know, he was.

2100. Are you certain he was?—No.

2101. You are certain he was to one?—I am certain he appeared, and supported the claim.

2102. Was he agent in the transaction himself?—I think so, but I cannot say positively.

2103. *Chairman.*] Were there any other cases of joint proprietorship that year?—I have no other cases mentioned before me.

2104. Did you inrol any cases of long leases?—Yes, James Paterson and Adam Paterson, of Edinburgh.

2105. From whom did they acquire their property?—From Mr. Fysh, and a person of the name of Hutchinson.

2106. What was the price fixed?—The price they paid Mr. Fysh was 300*l.*; I do not know what was paid for the other subject.

2107. Was the whole price paid?—Yes.

2108. Did you act as agent in the transaction?—No; I think Mr. Paterson, who is a writer in Edinburgh, did the business himself.

2109. Had either of the Mr. Patersons property in Selkirkshire before?—Yes, James Paterson had.

2110. What was the value of that?—He has a pretty good subject under the burthen of his mother's life-rent, but his mother is alive; but he had two small houses of 8*l.* or 9*l.* a year.

2111. With the addition of this property, for which he paid 300*l.*, he acquired a qualification for himself and his brother?—Yes.

2112. The price was paid in full?—Yes.

2113. Is the property let to a tenant?—I think Mr. Fysh, who sold it, still occupies it.

2114. Do you know the value?—The two properties 26*l.* or 28*l.*

2115. Sir *Thomas Fremantle.*] Were the votes objected to?—Yes, they were; all the votes in 1836, on both sides, were objected to; that was the system.

2116. Both parties objected to every vote?—There may have been an exception; but that was the general course.

2117. *Chairman.*] Those votes were substantiated?—Yes.

 2118. Did

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2118. Did you then inrol any more cases of long leases?—Yes, William Scott and Thomas Fairgrance.

2119. From whom did they acquire their qualification?—They partly both acquired from their father, under their succession.

2120. Had they both property before?—Yes.

2121. What was the value of the property they had before?—Each of them had 7*l.* or 8*l.*

2122. Did they buy the property in order to make up sufficient for the qualification?—Yes.

2123. They got that from you?—Yes.

2124. What did they pay you for it?—One hundred and seventy pounds, I think.

2125. Did they pay it in cash?—No.

2126. How did they pay it?—I hold their bill.

2127. Does that bill bear interest?—Yes.

2128. Sir *William Rae.*] Has interest been paid?—No, it is not a year yet.

2129. *Chairman.*] Who occupies the property now?—There are a variety of tenants.

2130. The same as occupied before?—I do not know whether there is a change or not.

2131. Do you receive the rent?—I receive rent for the property I sold.

2132. Do you account to them for that rent?—I hold myself bound to account; it is a recent transaction; there has been no accounting yet.

2133. Will that be applied to pay the interest on the bill?—Yes, I would just pay him over the balance; there would be a year's interest due probably in July or August last.

2134. Sir *William Rae.*] Have you asked for the interest?—No.

2135. *Chairman.*] Did you receive the rent?—I have no doubt there has been an amount of rent paid; I am not sure whether the whole is discharged.

2136. Sir *Thomas Fremantle.*] Do the tenants know that the property is sold?—Yes.

2137. Sir *William Rae.*] Under what authority do you receive the rents?—Under the authority of the parties.

2138. Had you a written authority?—No, I do not know that I had.

2139. A mere verbal authority?—Yes.

2140. *Chairman.*] Is there any other case that you inrolled?—Yes, George Innes and David Innes.

2141. What was the history of that transaction?—That is over houses in Galashiels.

2142. Were they purchased?—They were purchased from me.

2143. The property was yours?—Yes.

2144. What was the price?—Rather better than 340*l.*

2145. Was that price paid you?—Yes.

2146. Paid in cash?—Yes.

2147. Are the two Innes's brothers?—Yes.

2148. Viscount *Stormont.*] By whom were you paid the 340*l.*?—By George Innes.

2149. What is George Innes?—He is Mr. Pringle's servant.

2150. What servant is he?—His head groom, I think he is.

2151. Who is David Innes?—I think he is in the employment of some person in East Lothian.

2152. Is he in the employ of Sir David Kinloch?—I am not sure whether he is not.

2153. What employment does he hold?—I do not know.

2154. You do not know whether he is a groom also?—No, I do not.

2155. Have they any other property that you know of?—I do not know that they have any other heritable property; I believe George Innes has money.

2156. *Chairman.*] Have you any reason to believe that those parties were assisted with this money?—Not the least.

[*The Witness delivered in the following Tables.*]

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SELKIRKSHIRE.—TABLE, No. 1.

PRESENT ROLL, 1836.	Description of Voters.				TOTAL
	Proprietor.	Life-renter.	Tenant.	Old Roll.	
Resident - - - - -	159	7	89	9	264
Non-resident - - - - -	126	105	22	35	288
Total - - - -	285	112	111	44	552

SELKIRKSHIRE.—TABLE, No. 2.

Enrolled.	Total in each Year.	Description of Vote.				Whereof Non-resident.			
		Proprietor.	Life-renter.	Tenant.	Old Roll.	Proprietor.	Life-renter.	Tenant or Joint Tenant.	Old Roll
1832	280	139	—	91	50	26	—	20	40
1833	73	49	1	23	50	21	—	4	40
1834	156	119	10	27	50	66	8	9	40
1835	69	47	15	7	50	23	13	2	40
1836	146	51	89	6	50	31	87	1	40

Lunæ, 27° die Februarii, 1837.

MEMBERS PRESENT.

Sir Hugh Campbell.
Mr. W. Campbell.
Lord Stanley.
Mr. Fox Maule.
Mr. Bingham Baring.
Mr. Buller.
Viscount Stormont.
Mr. Divett.
The Lord Advocate.
Sir William Rae.
Mr. Ferguson.

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. *Robert Haldane,* again called in; and further Examined.

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2157. *Chairman.*] WERE there any cases of joint life-rents in the year 1836?—There were.

2158. Do you know the case of lands of Redford Green?—Yes.

2159. Was any number of life-rents enrolled on Redford Green in that year?—Yes, 41.

2160. Who granted those life-rents?—Mr. Pringle, of Whitebank.

2161. To whom did Redford Green formerly belong?—To Mr. Rutherford.

2162. Did Mr. Pringle acquire it from Mr. Rutherford?—Not directly; in September 1835 Mr. Rutherford sold the estate by a minute of sale to Mr. Robert Haig; Mr. Haig assigned that minute of sale, with consent of Mr. Robert Keith Pringle, to Mr. Pringle, of Whitebank, on the 9th of January 1836.

2163. What had Mr. Robert Keith Pringle to do with it?—There was a reference in the minute of sale to the solicitor-general, and failing his acceptance to Mr. Thomas Richardson, writer to the signet, to settle any disputes that might arise

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arise on the question of title; the solicitor-general did not accept the reference, and there was a good deal of discussion, and a reference before Mr. Richardson, with reference to Mr. Robert Keith Pringle, who appeared in the submission as having acquired right to the purchase, and the proceedings in the submission were conducted in his name.

2164. From whom did Mr. Robert Keith Pringle acquire the right of purchase?—Any interest he had was from Mr. Haig.

2165. Mr. Haig acquired a right from Mr. Rutherford, and he assigned that right to Mr. Robert Keith Pringle?—There was no deed produced, only proof of title in him by the assignment of the minute of sale to Mr. Pringle, of Whitebank.

2166. Lord *Stanley.*] Why was the consent of Robert Keith Pringle necessary?—By that proceeding before the arbitrators.

2167. *Chairman.*] Did Mr. Haig buy this property for himself, or did he appear to have been employed as agent for another?—That does not appear upon the minute; it appears that he bought it for himself.

2168. Lord *Stanley.*] Who is Mr. Haig?—He is a distiller, in the neighbourhood of Edinburgh.

2169. *Chairman.*] What was the date of Mr. Pringle's disposition?—The 22d of February 1836.

2170. On the 22d of February 1836, he became the proprietor of these lands, and not before?—He acquired an assignation to the minute of sale, but no other title.

2171. On what day were the dispositions of life-rent?—The 29th of January.

2172. The disposition to those life-renters was made by Mr. Pringle before he had acquired a disposition to himself?—Yes.

2173. Did the sheriff admit those votes?—Yes.

2174. Do you know the names of the 41 life-renters?—Yes; Robert Dundas, of Arniston; John David Hope, wine-merchant, Leith; James Robertson, W. S., Edinburgh, political agent for Sir John Hay, in Peebleshire; George Ball, merchant, Leith; Robert Brodie, Tenant, Bedrule; James Shortreed Elliott, Gilliestongues; Robert Laing, writer, Jedburgh, political agent for Duke of Buccleuch in Roxburghshire; Andrew Whitelock Mein, Jedburgh; William Rutherford, writer, in Galashiels, political agent for Duke of Buccleuch in Selkirkshire; John Rutherford, merchant, Jedburgh; Robert Rutherford, writer, Jedburgh, political agent for the Duke of Buccleuch in Roxburghshire; John Scott, residing at Boughtrig; Simon Scott, writer, Jedburgh, political agent for the Tory party in Jedburgh; David Brown, of Rawflat, keen partisan; William Ballantyne, nursery-man, Dalkeith; John Ballantyne, nursery-man, Dalkeith; Robert Curry, writer, Kelso, Tory agent; George Elliott, merchant, Dalkeith; George Jerdan, writer, Kelso, Tory agent, and editor of the 'Kelso Mail;' James Morrison, physician, Dalkeith; John Scott Moncrieff, accountant in Edinburgh, brother-in-law to Mr. Pringle, of Whitebank; Alexander Brodie Park, Bankhead; John Park, farmer, Westerwooden, tenant of Duke of Buccleuch; John Paterson, bank agent, Dalkeith; James Primrose, writer, Edinburgh; Alexander Rae, clothier, Dalkeith; John Rutherford, merchant, Kelso; Charles Robson, Lurdenlaw; John Smith, writer in Kelso, political agent for Duke of Buccleuch in Roxburghshire; Robert Swan, writer, Kelso; Walter Simpson, saddler, Dalkeith; Patrick Wilson, writer, Kelso, political agent for Duke of Buccleuch in Roxburghshire; John Williamson, Newtongrange; William Williamson, of Laretburn, Duke of Buccleuch's huntsman; Andrew Dickson, of Alton; John Elliott, of Beriks; William Nixon, manufacturer, Hawick; William Richardson, nursery and seedsman, Edinburgh; James Smail, of Catshawhill, nursery and seedsman; William Archibald Smail, of Oversmaine; Thomas Scott, son of Charles Scott, residing at Missington.

2175. You stated something about Mr. Haig assigning his minute of sale to Mr. Pringle, on the 9th of January; what are the terms of the minute of sale?—A minute of sale is where one person agrees, upon payment of a price or performance of any condition stipulated in the agreement, to grant a conveyance to another, and I think the minute of sale in that case was of that kind.

2176. *Lord Advocate.*] It is an agreement to convey upon the performance of certain conditions, and not an actual conveyance?—Yes.

2177. *Chairman.*] What were the conditions in this case?—The conditions as to payment were to pay instalments at various times, and I think there was a part of the price paid at the date of the minute, another part to be paid at the Martin-

mas

mas following, and the remainder at the Whitsuntide following; to the best of my recollection those were the terms of the minute.

2178. Upon the performance of those conditions this disposition was to be granted to Mr. Pringle?—Yes.

2179. The disposition was granted accordingly on the 22d of February?—Yes.

2180. Lord *Stanley*.] Was the legal point of the sufficiency of the minute of sale argued before the sheriff, or was there any question as to Mr. Pringle's right to make a disposition on the 29th of January?—Yes, there was a good deal of discussion before the sheriff.

2181. That legal point was legally discussed?—It was discussed before the sheriff as to Mr. Pringle's right to grant the dispositions before acquiring his own disposition.

2182. The decision was given in favour of the sufficiency of the minute of sale?—It was given, I think, by the sheriff, on the ground that the minute of sale was such a document as to entitle Mr. Pringle to insist for its implement; I believe that was the principle on which the sheriff decided.

2183. Viscount *Stormont*.] Was the minute of sale put upon record?—Yes.

2184. If the minute of sale is put upon record at the time by the law of Scotland, does it matter when the disposition is made?—I considered so; the sheriff of Selkirkshire held otherwise.

2185. Is not a minute of sale put on record a good title?—Not of itself, I think; it requires the implement by granting a disposition.

2186. The sheriff decided otherwise?—Yes; he held that the minute of sale was a sufficient warrant to induce him to put the life-renters upon the roll.

2187. Was this case appealed?—It was.

2188. What was the decision of the three sheriffs?—The same as the sheriff of Selkirkshire.

2189. Were they unanimous?—Yes.

2190. *Chairman*.] Is it certain that the disposition ever will follow upon the minute of sale?—It might not.

2191. Was it certain that Mr. Pringle ever would acquire a title to that property at the time he gave a title to those life-renters?—In point of law, I think, obstructions might have arisen to Mr. Pringle, of Whitebank, obtaining a sufficient title.

2192. Supposing between the 29th of January and the 22d of February, Mr. Rutherford had become bankrupt, what would then become of the land of Redford Green; would it have gone to his creditors?—It would not have gone to his creditors generally, I think; they would have been bound to perform the contract, but I believe that if any particular creditor had, before the title was completed and put upon the record, adjudged that estate by process before the Court of Session, that might have interposed a difficulty, and perhaps an insurmountable one.

2193. Can you state whether it would have reverted to Mr. Rutherford's creditors, or whether it would have accrued to Mr. Pringle?—I believe Mr. Rutherford's creditors would have been entitled to the price on the one hand, if it had not been paid, and so far as I know, the creditors would have been bound to the performance of their contract to Mr. Pringle.

2194. Mr. Pringle would have been the preferable creditor upon those lands?—Yes.

2195. Supposing Mr. Pringle had died in the interval, and his heirs had not chosen to pay the purchase-money, what would have become of the land?—I think his heirs would have been bound to pay the purchase-money if they represented him.

2196. Suppose they could not pay the purchase-money?—I think they would have been entitled to have abandoned the representation altogether, if they chose.

2197. Would Mr. Rutherford have been still proprietor of those lands?—He would have been a proprietor under a right to sue Mr. Pringle or Mr. Pringle's heirs, for the purchase-money.

2198. Lord *Stanley*.] Do you know whether those 41 gentlemen purchased the life-rents?—I think they were by purchase.

2199. Who was the agent in that transaction?—I think the deeds were written by Mr. Horne.

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2200. Who was the agent between Mr. Pringle and the life-renters?—I do not know who negociated it.

2201. You do not know whether the same person was or was not agent for both parties?—No.

2202. You do not know to whom the purchase-money of the fe-rents was paid?—No, I do not.

2203. Have you any reason to suppose that the purchase-money was not duly paid?—I do not know any thing about it.

2204. *Chairman.*] Do you know the case of the lands of Crosslee?—Yes.

2205. Were there some life-renters enrolled upon that property?—Yes, there were six.

2206. What were their names?—William Forbes, advocate, Edinburgh; John Inglis, advocate, Edinburgh; John Mackenzie, accountant, Edinburgh; William Forbes Mackenzie, of Portmore; Lord Ramsey; George Thompson, advocate, Edinburgh.

2207. Were any of those resident in the county of Selkirk?—No.

2208. Do you know any thing of the terms of the purchase?—It was the half of the farm of Crosslee that was conveyed to those gentlemen.

2209. By whom?—By Mr. Walker, of Boland.

2210. Do you know the terms of purchase?—The deed bore upon the face of it that the purchase was 990*l.*

2211. Do you know whether it was paid, or how it was paid?—No, each had a sixth of the half.

2212. Was any batch of life-rent put on the farm of New Hall?—Yes.

2213. How many?—Four.

2214. What were their names?—James Pringle, the younger, of Stichley; Norman Pringle, Edinburgh; James Nairne, writer to the signet, Edinburgh; Charles Nairne, writer to the signet, Edinburgh.

2215. They were not resident in the county?—No.

2216. Lord *Stanley.*] Have they any connexion with the county?—James Pringle was the son of Sir John Pringle, who has an estate in the county.

2217. *Chairman.*] Does he live in the county?—No, in Roxburghshire.

2218. Lord *Stanley.*] Who is Norman Pringle?—I think he was John Pringle's brother.

2219. Who were the two Mr. Nairnes?—I have heard that they were the agents of Sir John Pringle.

2220. Do you know to whom the lands of New Hall belonged?—To Sir John Pringle.

2221. *Chairman.*] Who was the agent in the transaction?—I think Messrs. Nairne.

2222. They made out the life-rent dispositions?—Yes.

2223. Who acted as agent in the case of the lands of Crosslee?—I do not recollect.

2224. Were there some life-rents enrolled on the lands of Glensacks?—Yes, three.

2225. Mention their names?—Samuel Hay, merchant, Havre; Lieutenant Charles Hay, of the Coldstream Guards; Adam Hay, banker, Edinburgh.

2226. Had those gentlemen any connexion with the county?—Not that I am aware of.

2227. From whom did they get their dispositions?—Sir John Hay, their brother, the member for Peebles.

2228. Who made out that disposition?—Mr. James Robertson, writer to the signet, Sir John Hay's political agent in Peebleshire.

2229. Lord *Stanley.*] Those three gentlemen, whom you state to have no connexion with the county, are brothers to Sir John Hay, to whom the lands belonged?—Yes.

2230. Is one of them Sir John Hay's heir?—I do not know.

2231. Has Sir John Hay any children?—I do not know.

2232. *Chairman.*] Did each get a third of those lands?—Each a sixth.

2233. What is the value of the whole property?—The value of the whole, I think, was about 72*l.*, the sixth of which was conveyed to each.

2234. Has Sir John Hay any other property in the county but that?—I do not think he has.

2235. Did

2235. Did you see the deed?—Yes, I did.

2236. Did it bear the consideration for which the life-rents were given?—I do not recollect.

2237. Can you state whether it was a gift or a purchase?—I am not sure; I cannot say.

2238. You spoke the other day of eight life-rents that were rejected on the farm of Vuefield; those were enrolled in the year 1836?—They were.

2239. Viscount *Stormont.*] They had been rejected the year previously, because there was an unfair division of the property and the furniture?—Yes, it was not altogether upon that; there was a question with regard to the value, and there was a decision as to the intimation to the tenant also.

2240. How was the deficiency in this value made up the following year?—Mr. Pringle assigned some land to the same gentlemen.

2241. What further consideration was given for that land?—None, I believe.

2242. Did he throw it in as a bonus to the purchaser of the previous year?—Those purchasers had acquired from him this property of Vuefield, and I have no doubt their object was partly, at least, to acquire a franchise; it did not afford a clear rental of 84*l.*, which Mr. Pringle had become bound to pay, and he assigned as much more as made it sufficient.

2243. There was no further consideration money; they paid no more for it?—No.

2244. How much land was there?—I cannot say the quantity; the value was better than 20*l.* a year.

2245. *Chairman.*] Was it valued?—Yes, I think the tenant was examined as to the rent; and his evidence went to show it was rather better than 20*l.*

2246. Viscount *Stormont.*] Those eight gentlemen acquired 20*l.* a year additional for no further consideration?—The value of the life-rent purchased was acquired before and expressed in the deed to them, and there was no additional sum of money paid that I know of to Mr. Pringle.

2247. *Chairman.*] On the lands of Fairnlie there were ten votes claimed the year before, were not there?—Yes.

2248. Those were admitted in 1836?—They were.

2249. On what ground had they been rejected?—Want of intimation to the tenant.

2250. Was that the sole reason?—I think it was.

2251. That intimation was given before the sheriff in 1836?—Yes.

2252. Sir *William Rae.*] There was a back-tack in that year for 100 guineas, the whole of the rent of the farm amounted to 167*l.*?—Yes.

2253. Are you possessed of that back-tack?—This is it—[*producing it*].

2254. Have you the disposition from Mr. Pringle to the life-renters on Fairnlie?—I have.

[*The same were read. Vide Numbers* 1 *&* 2, *Appendix to this day's Evidence, pages* 92 *&* 93.]

2255. Lord *Stanley.*] Was the execution of these life-rents and the back-tack, simultaneous in point of time?—I think they were of different dates.

2256. What was the difference of the date?—The disposition was the 30th of January 1835, and the back-tack the 16th day of July 1835, the 20th of July, the 21st of July, and the 19th of August.

2257. What was the date of the registration of the claim?—The claims are made in July, but the courts are sometimes held in August and September.

2258. Is the amount of rent reserved in the back-tack, similar to the amount of life-rent given in the disposition?—The same as the annual interest.

2259. Sir *William Rae.*] The life-rent conveyed covered the whole farm?—Yes.

2260. The rent of that was 167*l.* a year?—Yes.

2261. The rent payable to the life-renters was 100 guineas?—Yes.

2262. Therefore there was a difference between the value of the subject made over to them, and the rent received of 62*l.*?—Yes.

2263. *Chairman.*] He pays them 100*l.* a year for it, and sub-sets it for 167*l.*?—Yes.

2264. Sir *William Rae.*] At the time of the grant of this life-rent, was the subject under lease?—Yes.

2265. For how much rent?—One hundred and sixty-seven pounds.

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2266. As soon as that life-rent was granted, were those parties, the life-renters, entitled to draw the whole amount of 167*l.* from the tenant?—They contemplated only that they were to get 100 guineas of rent.

2267. After the conveyance to them as life-renters was made without reservation, were they or not entitled to insist for the whole of the rent of the farm?—No; I think it was understood by the parties that they were to draw only 100 guineas.

2268. If that back-tack had not been granted, could not they have insisted in a court of law upon the whole?—Not without breaking their own arrangement.

2269. How was that arranged?—Verbally, I believe; I think they could not have done it consistently with the understanding of the parties.

2270. Lord *Stanley.*] Was the rent reserved in the back-tack precisely the amount of rent they had a right to draw?—Yes, I consider them entitled to draw just that.

2271. They repaid back under the back-tack just the rent which by the grant they were entitled to draw?—They lease back again to Mr. Pringle the whole subject they acquired at a rent of 100 guineas.

2272. Precisely the sum it was agreed between them, they are entitled to draw?—Yes.

2273. For precisely the same term of years for which they were entitled to draw it?—Yes.

2274. And each separately drew the sum he was entitled to draw?—Yes.

2275. Then these parties, each of them severally, after they had executed the back-tack, conveyed back to the person from whom they had received it the whole of the interest they had in the property?—No, I do not think they did; they conveyed back by lease precisely the subject they acquired by the disposition at the rent of 100 guineas.

2276. Then what interest have they in the property?—I think they have no remaining interest except to draw the yearly rent.

2277. Mr. *Maule.*] Was there any profit attached to the drawing of those yearly rents?—The rents, so far as regards the life-renters, were fixed by the lease.

2278. Do the parties who draw the yearly rents from Mr. Pringle derive any benefit from drawing any rent?—They draw the rents themselves.

2279. Were not they obliged to pay those rents to other parties?—No, it was their own property.

2280. *Lord Advocate.*] They granted a lease to Mr. Pringle, under which he was to pay them 100 guineas a year, being 10 guineas each, and he has a lease under which he was to draw the rent from the tenant of the land?—Yes.

2281. Mr. *Maule.*] The rents of the tenants in possession of the land amount to the same sum for which they leased it back again to Mr. Pringle?—No, the rent from the tenant was a larger sum.

2282. Lord *Stanley.*] Was the sum they were entitled to draw precisely corresponding with the interest of the purchase-money supposed to have been paid?—Not the interest of the purchase-money; the purchase-money was regulated by the age of the party; it was more or less according to their age, and each of them was just to be entitled to draw for the sum of money for which each individual paid, namely, 10 guineas a year during their lives.

2283. *Chairman.*] Did they pay by bill?—No, they paid in money.

2284. Do you know the sum they paid?—One thousand three hundred pounds, two shillings and nine-pence.

2285. Sir *William Rae.*] Between the grant of the life-rent and the grant of that back-tack, did Mr. Pringle, of Clifton, exercise any acts of property on that farm?—I think he did; I do not recollect the date; Mr. Pringle was examined as to some acts of ownership, cutting wood and so on; but I do not recollect the dates he stated.

2286. Does it consist with your knowledge that he cut wood?—I do not know any thing about it, except what I heard Mr. Pringle state on examination; he stated that he cut wood, but I cannot be certain as to the date.

2287. *Lord Advocate.*] You know that the rent is paid by Mr. Pringle, and received by them?—Yes.

2288. That has been from the time of the lease?—Yes, according to the lease.

2289. Sir *William Rae.*] Was a back-tack contemplated at the time when the life-rents were granted?—Yes.

2290. But

2290. But there was nothing said in writing upon the subject?—Not that I know of.

2291. *Chairman.*] Do you know the lands of Whitslade?—Yes.

2292. Was there a batch of voters put upon that land?—There were eight put on each on a twenty-sixth part.

2293. What were there their names?—John Borthwick, of Crookston; the Rev. Isaac Beresford, of Macbrehiee; Ensign George Pott Erskine, 72d regiment of foot, Londonderry; James Erskine, writer, Melrose; Lieut.-Col. John Scott, of Ravenswood; Ensign George Pott, 3d regiment of Native Infantry, residing at Mynfroorie, Bengal Presidency; Lieut. David Pott, 47th regiment Native Infantry, residing at Lucknow, Bengal Presidency; Lieut. Stephen Pott, East India Company's Engineers, residing at Cawnpore.

2294. Have any of those gentlemen any connexion with the county?—No other connexion in point of property; two or three of those gentlemen are sons of Major Pott.

2295. Was the property acquired from Major Pott?—Yes.

2296. Are any of them resident in the county?—No.

2297. Viscount *Stormont.*] Does their father reside in the county?—No, in the county of Roxburgh; I believe his house is not far from Selkirkshire, but I think it is not in the county; I am now informed that it is in both counties.

2298. *Chairman.*] Do any of those gentlemen reside in the county?—No.

2299. Have any of them any connexion with it?—Not that I am aware of, except what that right gives them.

2300. From whom was this property acquired?—Major Pott.

2301. Does he reside in the county?—I have understood it was the county of Roxburgh; but it is on the confines of Selkirkshire; it may be in it.

2302. Are three of the life-renters his sons?—Yes.

2303. Lord *Stanley.*] Are any of the other gentlemen connected with him?—The two Erskines, I think, are his nephews; I do not know as to the others.

2304. Who are the other three gentlemen; are they connected with him in any way?—Not that I am aware of.

2305. *Chairman.*] Are any of them political agents for the Tory party?—James Erskine is.

2306. James Erskine, who is enrolled here?—Yes.

2307. Viscount *Stormont.*] What do you mean by connexion with the county?—I mean not residing in it, nor having any other connexion with the county than that which this right may give them.

2308. Do you conceive a person whose father has property in the county, and whose house is upon the border of the county, has no connexion with the county?—I mean not in their own right.

2309. Do you mean by that word, connexion with the county, to say that a man whose father has property in the county, and who has a house on the border of the county, has no connexion with the county?—That is the reason I stated that they had no connexion with the county.

2310. *Chairman.*] Has Major Pott large property in the county?—He has another farm besides Whitslade; he has two farms.

2311. Do you know the case of Andrew Anderson and Archibald Baird?—Yes.

2312. Were they put on for a joint life-interest in that year?—They are under different titles; they have nothing to do with one another.

2313. Did they acquire their title from the same person?—Yes.

2314. From whom?—From Mr. Pringle, of Clifton.

2315. Were you the agent?—Yes.

2316. Do you remember the price that was put on the life-rents?—I think Mr. Anderson's was somewhere about 120*l.*, and Mr. Baird about 140*l.*

2317. Was that price paid in cash?—It was.

2318. By whom?—By the parties themselves.

2319. To you?—Yes.

2320. Are they in possession of the life-rent, or did they grant back a lease to Mr. Pringle?—They gave back a lease to Mr. Pringle.

2321. What rent did Mr. Pringle give them for it?—Ten guineas each.

2322. Was that a life-rent lease?—Yes.

2323. Have you got it here?—No, I have not.

2324. Viscount *Stormont.*] Is it let to a sub-tenant?—I think it was in Mr. Pringle's own occupation at the time, and that it has been let since.

2325. For how much?—For 24*l.*

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2326. *Chairman.*] Was there any other case of joint life-rent that year?—No, I do not think there was any other.

2327. Sir *William Rae.*] Why was not the back-tack granted at the same time as the dispositions?—I dare say it was more to suit my own convenience; I drew both the deeds, and probably had not opportunity to get them executed before.

2328. Suppose Mr. Pringle had died in the interval, might not that rent have been taken without deduction?—Not honestly.

2329. Speaking legally, is any obligation valid as to heritable subjects in Scotland, which is merely verbal?—No.

2330. Was it not a very unbusinesslike proceeding in a case of so much importance, that no writing should pass about this back-tack at the time the disposition was given?—I think it would have been more safe for Mr. Pringle if it had been granted at the time.

2331. Was not the back-tack an after-thought altogether?—No.

2332. *Chairman.*] Were there any cases of exchanged life-rents that year?—Yes; there was one George Wilson, manufacturer, Hawick.

2333. From whom did he acquire his title?—Mr. Forest.

2334. Did he give Mr. Forest a life-rent in another county?—Yes, he did.

2335. In what county?—The county of Roxburgh.

2336. Was a back lease taken in each case?—I believe so.

2337. Did you prepare the deeds?—I prepared one of them.

2338. Which?—I prepared the conveyance by Mr. Forest to Mr. Wilson.

2339. Did you prepare the back lease?—I should think there was a back lease prepared.

2340. Was the occupation of the premises changed at all?—Not of Mr. Forest's; I do not know as to Mr. Wilson's.

2341. Was there any money passed between the parties?—No; they were of the same age.

2342. Was there any other case of exchanged life-rents?—John Paterson, of Peebles.

2343. With whom did he exchange?—Andrew Kerr, of Selkirk.

2344. Mr. Kerr got a life-rent in Peebles in exchange for one at Selkirk?—Yes.

2345. Was there a back lease taken in each of those cases?—I think there must.

2346. Did you act as agent?—I acted as agent for Paterson in acquiring the right: it was intended; whether it was executed, I am not positive.

2347. Do you know whether any money passed between them?—I think not; I think they were of the same age.

2348. Were there any other cases?—Charles Scott, writer to the signet; I cannot speak positively as to his; I understood he had acquired a right in Selkirk, and given one in Roxburgh to the same gentleman; I know that gentleman, Mr. Kerr, who gave Mr. Scott his life-rent, was enrolled last year in the county of Roxburgh, and I understood it was by exchange.

2349. Viscount *Stormont.*] Were any of those exchanged life-rents made by your opponents?—I believe Mr. Scott's was in exchange.

2350. *Lord Advocate.*] Who was the agent in that transaction?—Mr. Scott is a writer in Edinburgh, and I think he prepared the deed, which I saw, himself.

2351. Sir *William Rae.*] A good deal has been said about joint tenants on the Buccleuch estate in the county of Selkirk; have the goodness to look at that list, and state whether it is a correct list of the joint tenants on that estate in the years 1834, 1835 and 1836?—I would require to examine this before I spoke to it.

[*The Witness was directed to examine the same.*]

2352. With regard to remedy, what effect do you think would result from infeoffment being rendered necessary upon all dispositions, either in fee or life-rent?—I think it would be better to have all the deeds upon the record; that would take away the possibility of making any change upon the terms of those deeds during the period of the six months.

2353. By infeoffment, you mean a symbolical delivery of the property upon the ground, an instrument certifying the fact, and that instrument recorded?—Yes.

2354. In the case of a *bonâ fide* conveyance, would not the person who receives it be benefited by the taking of an infeoffment?—I think that would protect him from the claims of creditors or other parties acquiring rights, and that it would be better he should be infeoffed than not.

2355. Are there not certain rights a tenant not infeoffed cannot execute; can he remove tenants?—No.

2356. In case of a *bonâ fide* conveyance, his condition would be rendered better by means of an infeoffment?—I consider it proper in all cases to complete the title by infeoffment.

2357. Would it not secure him against another life-rent being executed by the same proprietor?—So long as deeds only personal passed, the proprietor might grant as many as he chose.

2358. Therefore no injury, but, on the contrary, benefit would arise to the grantees of *bonâ fide* deeds?—Yes.

2359. In the case of a colourable conveyance, would not infeoffment be the means of rendering the transaction public, by its being put upon the record?—Yes, I think that would be a benefit in all cases whatever.

2360. That would afford an opportunity of inquiry previous to the period of registration?—Yes.

2361. Would it not also have the effect of making the proprietor cautious of making a conveyance of that nature, seeing that the creditors of the grantee, in consequence of the infeoffment, would be entitled to attach the subject?—I do not think that would make any difference to people granting deeds.

2362. At present, after a deed of disposition is granted, may it not be given back to the proprietor the day after, and put into the fire, without any thing appearing on the record in respect of it?—So long as deeds are not recorded they may be cancelled by the parties.

2363. If infeoffments take place, can that be done?—No, it would require a new deed to accomplish it.

2364. Would not the creditors of the person holding it be entitled to attach that subject?—I think the creditors of any person infeoffed in property would be entitled to attach it so long as he held it.

2365. Would not his widow be entitled to terce upon it?—Yes, where the lands were not held in burgage, in which I believe that right does not attach.

2366. Do you not think it would weigh with the proprietor in making a conveyance of that description, the consideration that by infeoffment being taken, the creditors and also the widow would acquire rights to the property?—No; I think it will not make any difference to the proprietor granting the right, so far as I see.

2367. Do you think it would be the same to him as it is now, where the deed may be given back the next day and burnt?—A person would in one case destroy the deed, and in the other make a new conveyance.

2368. Lord *Stanley.*] Would not the new deed require an infeoffment, and thereby give publicity to the re-conveyance?—I think it would be optional to the person getting the re-conveyance to get infeoffment himself; if he chose, he might stand upon his title, which in small subjects is often done.

2369. Sir *William Rae.*] A person claiming under it would not be entitled until infeoffment was taken?—He would not be feudally.

2370. Mr. *Walter Campbell.*] What is the difference of expense between simple conveyance and title by infeoffment?—Where infeoffment follows, it would double the expense.

2371. Is it your opinion that in the conveyance of small properties the parties so conveying that property would go to that expense?—Very often not; I have very often assigned warrant to infeoff a century old, where the parties during all that period have never been infeoffed.

2372. Sir *Hugh Campbell.*] What do you consider to be the reason of their making infeoffment after so long a period?—If they wanted to borrow money, for instance, they must make up their own title before any person would lend them.

2373. That would render their title more secure?—Their own title must be complete before they can grant proper security to another.

2374. Sir *William Rae.*] If such back deeds as you have described were declared to be illegal, do you think that would operate to correct such colourable transactions as those you have been describing?—I think it would be better if they were declared to be illegal where it was found to be a colourable transaction; but where the transaction is a real one I do not see any objection to the back leases at all.

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2375. In the cases you have mentioned, where persons in Selkirk and Roxburgh made mutual exchanges with a back-tack, do you think these would have been prevented if the granting a back-tack had been made illegal?—I think that the parties might have made conveyance of property of the same value without back-tack.

2376. Mr. *W. Campbell.*] A wealthy man would not mind making infeoffment, but a poor man might feel it an inconvenience?—In large transactions they are made, and a wealthy man is much more likely to make infeoffment in small transactions than a poor man.

2377. A poor man, who has a small and valid investment of money on property, would be satisfied to remain on a simple transfer of the property, while a wealthy man, for fictitious purposes, would be still likely to take an infeoffment, as the expense of things would be immaterial to him?—Yes, I consider it so.

2378. Sir *William Rae.*] Is it or not the general practice for persons buying small properties to take infeoffment on their *bonâ fide* transactions?—I think in small properties in Selkirk, where I have most experience, the parties are not infeoffed.

2379. Your answer applies to transactions unconnected with the qualification?—Yes.

2380. *Lord Advocate.*] And before the Reform Bill was passed?—Yes.

2381. Have you not known very considerable properties where parties remained uninfeoffed, where they have no suspicion of the seller doing any thing unfair?—Yes, I have.

2382. Lord *Stanley.*] You have described a number of cases; will you state what are the different classes of votes which you consider to have been productive of fictitious qualifications?—I should say joint proprietors, life-renters and joint tenants.

2383. You do not consider all joint proprietorships, all joint tenancies and all life-rents to be fictitious?—No.

2384. What are the circumstances which you conceive give a fictitious character to those three different classes of votes?—Where eight or ten parties are associated together in a purchase who have no natural connexion with each other, in business or otherwise, living in different parts of the country, all on the same side in politics, and where the prices paid preclude the possibility of the purchase being for an investment.

2385. Will you have the goodness to give two instances of cases, taking one on each side, in political questions of this class of fictitious voters, among those you have enumerated?—I would mention the case of the County Inn, and Bythorn, the persons in the case of Mr. Clezy.

2386. Do those include proprietors on long leases as well as proprietors in fee?—Proprietors in fee.

2387. Having mentioned what you consider stamped the transaction with a fictitious character, has any remedy occurred to you for the prevention of that class of fictitious voters?—I think it would be an improvement in the law, if persons were not allowed to hold property with 10*l.* qualifications in that way, if they should be joint proprietors at all, that the number should be restricted, and where there are joint proprietors in a much larger concern that there should be a much higher amount of qualification.

2388. Do you mean to say you would have a law prohibiting a certain number of persons joining together to purchase property?—In regard to qualification under this Act. I do not see any harm in it.

2389. Do you mean that you would prohibit persons joining to purchase property, or acquiring votes under it?—From acquiring votes under it.

2390. Suppose a *bonâ fide* transaction to purchase a property by persons of different political sentiments, how would you propose to settle the question as to which should vote?—I would not have any of them entitled to vote on the same principle, as I should like to see joint proprietorships for voters abolished.

2391. Your remedy for avoiding fictitious joint proprietorships is to take away the right of voting from joint proprietors altogether?—Yes, I should like to see that.

2392. Do you conceive that proposal is according to the spirit and the intention of the Reform Act?—I think according to the spirit of it.

2393. According to the provisions of it?—Not according to the wording of it.

2394. According to the plain intention of it?—Yes.

2395. That

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2395. That joint proprietorship should be abolished?—That it should be limited; at all events, that there should be some limitation, to prevent a hundred pound property being divided so as to give ten votes.

2396. Do you or not make any distinction between those which are *bonâ fide* for an investment of money and those which are colourable, and if so, how do you draw your distinction?—I think there should be no distinction at all; I think, so far as I can see, if the people were resident in the county, and occupied the premises for the purposes of their business, there might be some feeling of difference, but whether the law should be different or not I cannot say.

2397. Mr. *William Campbell.*] Have you ever considered this question of a remedy?—Not much.

2398. *Chairman.*] Are the answers you have just given without consideration?—Yes, I expected to be examined as to the facts.

2399. Do you feel yourself capable of giving answers as to the remedy?—No, I think it requires great consideration.

2400. Viscount *Stormont.*] Did you sign the petition to the House of Commons from the county of Selkirk?—Yes.

2401. From the county of Roxburgh?—Yes.

2402. *Chairman.*] Are you an elector for the county of Selkirk?—Yes.

2403. Lord *Stanley.*] You are understood to say you are not prepared to suggest any remedy for any of the classes of fictitious votes, the existence of which you come here to state?—I think residence in the county would be a great improvement.

2404. Are you prepared to suggest remedies; if so, the examination may proceed?—I have not given the thing much consideration, certainly.

2405. What is the second class of fictitious votes which you consider to have prevailed in Selkirkshire?—I have mentioned life-rents.

2406. What do you conceive to be the circumstances which stamp a fictitious character on the acquisition of a life-rent?—In the county of Selkirk they are nearly altogether non-resident, so far as I know; the parties acquiring the right have no other connexion with the county, do not possess the subjects they acquired; and I think it has been so managed as to render it a simple annuity transaction to give the franchise.

2407. Do you draw any distinction with regard to the life-rents as to whether the money has been actually and *bonâ fide* paid or not?—I think the principle of the thing is the same whether the money is paid or not, for security, where the parties are in circumstances to pay, and give their obligation to pay, which they must do, or pay money, that is just the same.

2408. Do you think a person residing in an adjoining county, and having for the purpose of the franchise purchased a life-rent, for which he has given a *bonâ fide* sum equal to the true value of that purchase, is a fictitious voter, and ought to be struck off?—Yes, I do; the reason I have come to that conclusion is this, that if a person wants to secure an annuity of 10*l.* independent of the franchise, he must know that he can get that from the insurance office with a much better chance of its being paid.

2409. Mr. *Fox Maule.*] Do you consider a vote so acquired by the payment of 200*l.* to differ very much from that qualification, and which since the Reform Bill a person cannot acquire in the county, and which was actually abolished by the Reform Bill?—I think that it is very much like the old rights of superiority which were abolished.

2410. Lord *Stanley.*] Is it your opinion that that species of life-rents is in itself a colourable franchise, which ought to be abolished?—Yes; I should like to see them all abolished.

2411. *Lord Advocate.*] Do you state that without qualification, or only applying to such life-rents as were not known in the county before the Reform Bill passed?—I apply them not to persons holding by succession or marriage contract or office.

2412. Do you include reserved life-rents, supposing a person selling his estate reserves a life-rent of that estate?—No; I do not comprehend that under my answer.

2413. Do you limit it to such transactions of life-rents as were not known in the county before?—Yes.

2414. Lord *Stanley.*] Will you explain what you mean by such transactions of life-rents as were not known in the county before?—It was unknown to me 30

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or 40 people acquiring life-rents over a tenth or a twentieth part of an estate for the purpose of voting.

2415. *Chairman.*] Did you ever know before the Reform Bill an instance of life-rent by conveyance?—No, where the granter reserved the fee.

2416. Did you ever know an instance of life-rent by purchase before the Reform Bill?—I am not aware of any.

2417. How were life-rents acquired previous to the Reform Bill?—Technically very much like to those which have been done since.

2418. A person claims a life-rent in virtue of his wife's property?—Yes.

2419. Could he be a life-renter by succession?—Yes.

2420. Could he be a life-renter by virtue of office, such as minister or schoolmaster?—Yes.

2421. Do you know any other mode by which a life-rent was held in any instance previous to the Reform Bill?—I never knew any instance of a person purchasing.

2422. Did you ever know any instance of a person holding a life-rent in any other manner than the three just mentioned, and a fourth, that of a person disposing of the fee, and reserving the life-rent?—I do not recollect any other.

2423. Can you state generally whether or not life-rents were held in any other manner than those four before the Reform Bill?—I am not aware of any other manner in which they were held.

2424. Lord *Stanley.*] You have stated that you consider all joint proprietorships in life-rent by purchase as fictitious, colourable and objectionable votes; is there any one which you consider as fictitious, colourable and objectionable?—Joint tenancies.

2425. Do you mean by short or long leases?—Short leases, agricultural leases.

2426. Do you consider all cases of joint tenancies fictitious?—No, I think they may not be; I think there is a very wide distinction where the tenants are living upon the farm, and contributing jointly to the stock, and having an equal joint risk in the leases, and in short, concerned in the whole transactions of the farm out and out; I think there were certain tenants in that way in 1832.

2427. Those you consider as good votes?—I do, because the persons were living upon the farm and managing it.

2428. Have the goodness, taking your own distinction, to point out instances of fictitious votes which have been alluded to by you under the head of joint tenancies in the agricultural districts?—There was one person, as I explained, struck off the roll because he had no interest.

2429. The question refers to those put upon the roll?—This man was put on the roll, but was struck off on the discovery that he had no interest in the farm.

2430. The charge is that the constituency of the county has been swamped by fictitious voters; will you state any which come within that description?—I have a suspicion of all the joint tenancies introduced in the county of Selkirk since 1832, where leases running in favour of one person were renounced, and leases taken in favour of two or three; I have very great suspicion, though I could not bring proof that they were not fair transactions.

2431. You stated that you conceived where the parties were living upon the farm, and occupying the farm, sharing the profits, they were *bonâ fide* cases, will you state what instances there are of joint tenancies in the agricultural districts which you consider fictitious?—I consider them all fictitious; I could not bring legal evidence of the fact, and therefore the sheriff put them upon the roll.

2432. Can you state a single instance of agricultural joint tenancies in Scotland which do not come under those terms you have yourself admitted would constitute them good votes, inasmuch as they have a common interest in the farm, and live together as one family?—I would state all the cases of joint tenancy which I challenged, but as I failed in my proof, I do not think I am at liberty to state that I count them as fictitious votes.

2433. Do you consider any of them as fictitious votes after the distinction you have drawn?—There is a belief in my mind that many of them have not a real interest in the farm.

2434. Will you give the instances?—I have mentioned Brydon and his brother; I do not think they have truly a beneficial interest.

2435. Is there any other class beside joint proprietors, life-renters and joint tenants, which you consider to be open to the charge of being fictitious votes?—I think

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I think the same rule as to joint proprietors would apply to joint tenants under long leases, supposing ten or twenty people buy in the same way.

2436. Will you give an instance of that class?—I do not recollect at present that there is any person upon the roll.

2437. What are the circumstances which would stamp the transaction, in the case of joint tenants under long leases with the character of a fictitious vote?—Acquiring the right in the same way as I have mentioned, as proprietors, under the same circumstances, and then the difference of title would not alter it.

2438. Acquiring the right in what way?—Just as I stated in regard to proprietors; though the holding is different, the circumstances in other respects are all the same, according to my apprehension.

2439. Do you consider the transfer mutually of part of the premises a fraudulent transaction?—It does not necessarily follow, but I think if there were ten people acquiring a right to a subject held under long leases, a mill and machinery, a house, for instance, and none of those manufacturers or either of them in possession, and having no connexion with each other and non-resident in the county, those are circumstances I would hold to give them a fictitious character.

2440. You are not prepared to suggest a remedy in that case, any more than in the other cases?—No, I think the same rule ought to apply to them as to joint proprietors.

2441. Viscount *Stormont.*] How many joint tenants under long leases were there in 1832?—I have no doubt there were several, but I cannot recollect how many.

2442. Mr. *Maule.*] Previous to the year 1832, was it the custom in Selkirkshire, with which you are peculiarly connected, for gentlemen to give up their leases, in order that new leases might be granted to them, including a number, two or three, or more joint tenants?—I never knew any case of that kind before 1832.

2443. In all the cases which have occurred since 1832, do you say you have reason to believe it was done for the sole purpose of acquiring the franchise?—That is my belief.

2444. *Lord Advocate.*] You stated that you were aware that before the Reform Bill was passed life-rents were acquired of superiorities for the purpose of creating votes?—Yes.

2445. You consider them put an end to by the terms of the Reform Bill?—Yes.

2446. With the exception of these life-rents upon superiorities, for the purpose of creating votes, were you aware of any life-rents having been purchased and acquired in the county before the Reform Bill?—No, I am not aware of any.

2447. Do you consider the life-rents, acquired after the Reform Bill, as acquired for the purpose of creating votes, in the same manner as the old life-rents of superiorities were acquired before the Reform Bill?—Yes, I considered it part of the same system.

2448. You are understood to consider those life-rents acquired after the Reform Bill by purchase as objectionable, because they were a previously unknown transaction, and solely made for the purpose of creating votes?—Yes, that is my opinion.

2449. Lord *Stanley.*] Can you state the number of persons with whom you have had transactions on the matter referred to, with whom you have had no other transactions?—I cannot state the number without referring to my books; there was a considerable number; I should say from fifteen to eighteen, but I cannot state it positively.

2450. What is the amount of the balances lying on your hands unclaimed?—Very small, in each case, very small.

2451. Those are all cases in which you have had no other transactions with the parties?—Not all of them; there are some in which I have had other transactions with the parties.

2452. In how many have you had no other transaction with the parties?—Very likely two-thirds of them.

2453. Viscount *Stormont.*] Are you to be understood, that you conceive it makes no difference in the quality of a vote, whether or not money has been paid for the property?—I think it makes no difference as regards the legality of the transaction; I consider a person granting an obligation for 100*l.*, if he is solvent and able to pay, just as much a proprietor as if he had paid money.

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2454. Do you consider that in the case of Mean and Mather, whom you mentioned, who gave a bill to Mr. Douglas for the money, who never drew the rent, who never paid any interest, their votes are more fictitious or exactly the same as the case of two individuals who bought a property out and out, and paid for it?—I would consider that of the person who pays to be a clearer case and a better case.

2455. Would you propose that the votes in both cases should be abolished?—I think it would go far to abolish that class, if by law the heritable burdens on the right should be deducted from the value.

2456. Is it your opinion, that in all cases the heritable burdens should be deducted from the value of the property?—I think it would be an improvement of the law to have that in all cases.

2457. *Chairman.*] Have you considered that answer?—Yes.

2458. Viscount *Stormont.*] Take the case of a man who borrows 200*l.* for the purpose of building a house; he borrows that on a heritable bond upon that house when so built: do you consider that it would be advisable to prevent persons having votes who have such heritable bonds upon such houses?—Yes; I think that would be an improvement in the law.

2459. Provided the clear annual value of 10*l.* did not remain after the payment of the interest on the bond?—I think no person should be put on the roll unless there is a balance after the payment of the burdens which amounts to 10*l.*

2460. Mr. *Maule.*] It is your opinion, that a person having such a right as you have just described ought to have, over and above all incumbrances, a clear 10*l.* a year value?—Yes.

2461. Can you state how many small properties you purchased in the county of Selkirk, for the sole purpose of making qualifications upon them?—No; that would require some consideration.

2462. You purchased some?—Yes; I have no doubt the object of the greater number of the proprietors, both in fee and in life-rent, was to acquire the vote, and not for investment of money.

2463. *Chairman.*] Is it a great object to find properties that are for sale, to make votes upon them?—I conceive it is.

2464. Are properties looked out for by both parties in the county?—Yes.

2465. Have you now with you any back-tacks granted on an exchange of life-rent?—I have.

[*The Witness produced the same. Vide No.* 3, *Appendix to this day's Evidence, page* 95.]

2466. Will you furnish the Committee with an account of the total number of joint agricultural tenants, joint-tenants upon long leases, joint-proprietors and life-renters, which have been made by the one party and by the other?—I will prepare that account.

2467. *Chairman.*] There is a very keen struggle going on in Selkirkshire?—Yes.

2468. Is it quite notorious that the parties are both anxious to increase their political influence?—There is no doubt of that.

2469. Is it generally avowed that votes are made for that purpose?—Yes, I think so.

2470. Is it only avowed by one party, or by both?—I have heard it talked of by both parties, as being the avowed object of both parties to make as many votes as they can.

2471. Have you heard it generally stated that many of the votes that were held to be good under the provisions of the Reform Bill, are, in the opinions of the parties themselves, of a very doubtful character?—I have heard that often stated.

2472. By one party or by both?—I have heard it stated by people on the roll, voting for both sides in politics.

2473. Have you any hesitation in saying yourself that you put many votes upon the roll, which, though held to be good under the Reform Bill, you consider to be of a very doubtful character?—I think that there have been many votes put on where the transactions have been so managed and conducted as to make it very questionable whether the parties would otherwise, but for political purposes, have had any connexion with them.

2474. Mr. *Maule.*] Have you not put on the roll yourself many votes, which, if they had been put on the roll by the opposite party, you would have questioned as doubtful votes?—Yes.

2475. Mr.

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2475. Mr. *Walter Campbell.*] You are aware that by the Reform Bill all superiority life-rents were done away with, and that there was a great feeling in Scotland against the principle of superiority life-rents at the time of the passing of the Reform Bill?—There was.

2476. Is it not notorious that in all the counties which you know where life-rent votes, of the character which you have described in the course of your evidence, have been put on, it is considered by real *bonâ fide* holders of the franchise in those counties that those life-rents are in reality a continuation of the life-rent system which was abolished by the Reform Bill?—They consider the present system of life-rents worse than the system under the old arrangement, inasmuch as it has been carried, and is capable of being carried, to a much greater extent.

2477. Is not that system of life-rent voters, so created, felt to be the most disagreeable to the real *bonâ fide* holders of the franchise in the county?—Yes, that is the feeling generally.

2478. Lord *Stanley.*] Do you know any thing of the rights of voting in England?—No.

2479. You do not know whether there is any distinction as to life-rents in Scotland and in England?—No.

2480. Did not the holders of the old superiorities vote to the exclusion of the owners of the fee?—Yes.

2481. Is that the case with the life-renters under the new system?—If the fiar conveys all his property to the life-renter, he has none himself; the fiar would require to retain so much over which there was no burden of life-rent, as to entitle him to be put upon the roll.

2482. The superiority conveyed no pecuniary interest at all?—No.

2483. The life-rent does convey a pecuniary interest?—Yes.

2484. Is that a valid distinction between the two, or not a valid distinction?—It is a distinction.

2485. Is it a broad distinction which would prevent your saying correctly that one system was a continuation of the other system?—The distinction does not change my mind, that there is no annual return, which makes me think there is a difference between the one and the other.

2486. Is the holder of the life-rent the holder of a pecuniary interest in the county, while the holder of a superiority was only the holder of a superiority, without pecuniary interest?—Yes.

2487. Do you consider this as that which makes a distinction under the Reform Bill, which was to give to those interested the power of representation of the counties?—I do not see that there is any difference at all where the life-renter's right is just limited to drawing a certain sum annually during his lifetime, having no power of possessing the subject.

2488. You see no difference between a man who has a pecuniary interest in a county and a man who has no pecuniary interest in a county?—Not in this way; I consider it a mere insurance, a mere annuity; I consider the land just pledged for the annual payment of the annuity, and that that is the only difference between it and an ordinary life insurance by a society.

Mr. *Peter Rodger,* called in; and Examined.

Mr. *Peter Rodger.*

2489. *Chairman.*] DO you reside in the town of Selkirk?—Yes.

2490. You are a writer there?—Yes.

2491. Are you political agent to the Tory party in Selkirk?—I was from 1832 to 1835.

2492. You are not political agent at the present moment?—No.

2493. What was the occasion of your ceasing to be political agent to the tory party in Selkirk?—In consequence of a communication from the then Lord Advocate, Sir William Rae, recommending that procurators fiscal should not act as political agents.

2494. When were you appointed procurator fiscal?—I should think in 1827.

2495. This communication was at the beginning of 1835?—In February 1835.

2496. Since that you have not acted as political agent for the county of Selkirk?—No.

2497. Have you ceased to take any part in the political transactions of the county of Selkirk?—Yes.

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2498. When were you appointed political agent?—In July 1832.

2499. Under whose order did you act at that time?—Mr. Pringle, of Whitebank.

2500. The present Member for the county?—Yes.

2501. What other political agents were there in the county on the same side with you?—None at that time in Selkirk; Mr. Craig was at Galashiels.

2502. What agents were appointed afterwards?—Mr. Horne was appointed subsequently.

2503. When was he appointed?—I should suppose in the beginning of 1833.

2504. Were you agent for Mr. Pringle, of Whitebank, otherwise than politically?—No.

2505. Was Mr. Horne appointed along with you to assist you in the charge of the county?—I was just told to communicate with him; that I might communicate with Mr. Horne as political agent.

2506. Was he resident in the county?—No.

2507. How were you given to understand you were to communicate with him?—In all communication I might feel necessary, that I might freely communicate with him upon the subject.

2508. Was he appointed along with you, or appointed as the agent under whose orders you were to act?—I was just instructed that I might communicate freely with Mr. Horne on all subjects.

2509. Mr. *Fox Maule.*] Did you take your orders and directions from Mr. Horne?—Occasionally.

2510. Sir *William Rae.*] Mr. Horne is a writer to the signet, residing in Edinburgh?—Yes.

2511. *Chairman.*] Previous to Mr. Horne's appointment did you take your directions principally from Mr. Pringle?—Yes, principally.

2512. After Mr Horne's appointment did you take them principally from him?—Not solely so; I did take them partly from him.

2513. Partly from him and partly from Mr. Pringle?—Yes.

2514. Are you aware of many properties being purchased in the county of Selkirk solely for political purposes?—Yes.

2515. When did the system begin?—I should say in January 1833.

2516. Who were the purchasers upon those occasions?—Both parties.

2517. Has that increased much since?—Yes.

2518. Do you consider all those purchases were carried on in the county for political purposes?—So far as my knowledge goes, they were out and out purchases.

2519. Are you aware that there is a complaint of fictitious titles being acquired in the county?—Yes.

2520. Are you aware whether that is a just complaint or not?—It depends upon the construction put on the word "fictitious."

2521. What do you consider by the words "fictitious qualification?"—That a person is not really the owner or the purchaser of the property.

2522. Supposing a person shows a title in the Sheriff's Court, which bears upon the face of it that he is the owner, and he is enrolled upon it, do you consider that that may still be a fictitious qualification?—If he has not paid the price, or is not *bonâ fide* the owner, and does not draw the rents, I conceive it fictitious.

2523. You consider that, to constitute a *bonâ fide* qualification, the person must derive a benefit from the subject?—Yes.

2524. Must a person derive a 10*l.* benefit from the subject?—Yes, the owner must.

2525. Do you consider that qualification fictitious on which the person does not derive a benefit to himself to the amount of 10*l.* a year?—Yes, in the case of an owner.

2526. Does that apply solely to owners, or do you think in all cases the person must derive a beneficial interest?—The tenants are differently constituted by the Acts.

2527. Do you think that that beneficial interest makes the vote good?—Yes.

2528. Are you aware of any qualification acquired by persons who do not derive a beneficial interest to the amount of 10*l.* a year?—That must have been proved to the satisfaction of the sheriff in the Registration Court; and if it were

appealed

appealed afterwards in the Appeal Court, where the case was objected to, or they would not have been put upon the roll.

2529. Do you hold that every vote which has been proved to their satisfaction to be a good one is a good one?—They were very much sifted, both by the sheriff of the county and the Appeal Court.

2530. You consider that where the sheriff has allowed the vote, that is a good vote?—That person, I conceive, has proved himself a good vote under the Reform Bill.

2531. Should not you state that every vote was, in your opinion, bad, where the person had not acquired a beneficial interest to the amount of 10 *l.* a year?—I should say so.

2532. Do you know any cases of voters put upon the roll who had not a beneficial interest to the amount of 10 *l.* a year?—No, I do not.

2533. Do you know the lands of Batts?—Yes.

2534. Did you know five individuals enrolled upon those lands?—Yes.

2535. Did each of those individuals acquire a beneficial interest to the amount of 10 *l.* a year?—Yes, they did.

2536. What was the price of that property?—Within 5 *l.* of 2,000 *l.*

2537. How was that paid?—In cash.

2538. The whole of it?—Yes, the whole of it in cash.

2539. Viscount *Stormont.*] No bill was given for the difference?—No.

2540. *Chairman.*] To whom was that paid in cash?—There were 650 *l.* of it paid to Dr. Anderson, of Selkirk, on the part of my father, who sold the property; Dr. Anderson transacted the business for my father.

2541. To whom was the rest paid?—It was paid to me.

2542. How much was the rest?—The difference between the 650 *l.* and the 2,000 *l.*

2543. The 1,345 *l.* was paid to you?—Yes, in cash.

2544. By whom was that paid?—By Mr. Horne.

2545. To whom did your father make the disposition?—To the five individuals upon the roll.

2546. Did Mr. Horne act as agent for those five individuals?—I understood he did.

2547. And he paid the money as their agent to your father?—Yes, to me, for my father.

2548. Were you aware of all that took place between Mr. Horne and those gentlemen at the time?—Not all the little particulars; but I was aware that such matter was going on.

2549. You were acting with Mr. Horne at the time?—Not in that transaction.

2550. You were acting as political agent with him in the county at that time?—Yes.

2551. Lord *Stanley.*] Was Mr. Horne appointed agent at that time?—I understood he was.

2552. *Chairman.*] Do you know when those parties paid the money to Mr. Horne?—I do not know; I was not aware of all the particulars that passed between Dr. Anderson and Mr. Horne, who acted for my father as his friend.

2553. Your father had purchased that property some years before?—Yes, several years before.

2554. In what year?—I cannot recollect.

2555. Was it in 1808?—I should think somewhere about that period, but I cannot speak to the year.

2556. Do you know what price your father paid for it?—No.

2557. Have you any means of ascertaining?—By looking at the titles; it is likely it would be mentioned in the disposition to him.

2558. Have you ever looked at the disposition?—Not lately.

2559. Have you any idea what price your father gave for that property?—I may form some idea, but not to come near it.

2560. What do you believe your father gave for that property?—I should say from 700 *l.* to 800 *l.*; that is my impression.

2561. Do you know whether there had been any particular change in the price of land between that period and the year 1833?—Indeed I cannot say; it is beyond my time; I cannot say whether land was higher then than now.

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2562. In what state is the land just now?—In a very good state; there are four enclosures of it, all well subdivided, fenced and watered.

2563. Are there any houses upon it?—None.

2564. Sir *William Rae.*] Where is this land?—Just on the confines of Roxburgh, in the neighbourhood of Selkirk.

2565. *Chairman.*] Can any great alteration have taken place upon that land since it was purchased in 1808?—Oh yes.

2566. In what way?—By being better fenced, drained and limed.

2567. What is the extent of it?—Forty-two acres.

2568. Your father had it in his own possession before he sold it?—Yes.

2569. He occupied it himself?—Yes.

2570. Have you any means of knowing what he made of it?—No, he farmed it along with Bridgelands.

2571. Do you know the fact, whether those individuals paid Mr. Horne the money he paid for it?—I have no reason to doubt that they did; he paid it to me.

2572. Did the property go out of your father's occupation?—No.

2573. How did he remain upon it; did he take a lease of it?—Yes.

2574. For what term was that lease of it?—For twelve years, from Martinmas 1832.

2575. What rent did he pay upon that lease?—Sixty-five pounds.

2576. Lord *Stanley.*] In what manner was the amount of the purchase-money fixed?—I cannot say, for Dr. Anderson informed my father of the matter.

2577. Did Dr. Anderson agree both upon the purchase-money and the rent to be paid?—Nothing about the rent.

2578. The amount of rent was not taken into consideration at the time the purchase was made?—No.

2579. That was an entirely separate transaction?—Yes, it was.

2580. Who settled that?—I settled the price.

2581. Therefore it was not a transaction in which the amount of rent was calculated with reference to the interest on the purchase-money, but the purchase-money was paid in cash, and then, as a separate transaction, negociations were entered into for the re-letting of the farm?—Yes.

2582. Was it a condition of the sale that your father should remain in occupation?—No.

2583. You conceive that your father afterwards entered into a negociation for the grant of a lease, upon the same footing as any other person?—I conceived so.

2584. Mr. *Fox Maule.*] Those negociations were entered into by private contract, and not by public advertisement?—Yes.

2585. Sir *William Rae.*] What number of years' purchase might this land be bought at?—I should think 33; upwards of 30 years' purchase.

2586. Is that an uncommon price for land in the neighbourhood of Selkirk?—No.

2587. Can you state the actual rate at which other properties have been sold?—I cannot instance any properties now; but property in the neighbourhood of Selkirk generally sells at between 30 and 40 years' purchase.

2588. *Chairman.*] Are you aware of objections having been taken against the qualification acquired by those persons?—Yes.

2589. On the ground that the land was not of a value sufficient to give them all qualifications?—It was objected to first in the registration of 1832; and in the registration of 1836 on several grounds.

2590. In 1832, was it stated as an objection that the land was not worth 65*l.* a year?—I should think it very probable that was one of the objections.

2591. Do you know whether there were other objections?—I cannot state at this moment.

2592. Were you in the habit of attending and enrolling the claims in the Sheriff's Court?—Yes, from 1832 to 1834.

2593. You cannot recollect whether those votes were objected to on that ground?—That might be one of the objections, but I have no recollection upon that matter.

2594. Do you recollect any objection to value being made in any subsequent year?—Yes, in 1836 there was evidence on the part of Mr. Haldane, and he called three witnesses, I think.

2595. What

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2595. What occupation or class of life were they in?—Mr. Stephenson, a farmer in the neighbourhood of Selkirk, Mr. Fairbairn, a farmer, and Mr. James Leach, a farmer.

2596. Did that evidence go to prove it under 65 *l.* a year?—Yes.

2597. What value did they put upon it?—Speaking from recollection, I should say from 40 *l.* to 45 *l.*

2598. Mr. *Fox Maule.*] Do you consider those gentlemen practical farmers?—Yes.

2599. Such as you would not have objected to on the ground of integrity?—Yes.

2600. *Chairman.*] Good judges of land?—Yes.

2601. Did you bring any evidence in contradiction to that?—No, there was none led, except when I was examined in the Appeal Court, I think there were some questions put to me, for there were no other witnesses.

2602. Was the fact admitted which the evidence of those witnesses went to prove?—No.

2603. How came that not to be disputed?—There was produced a regular lease bearing that 65 *l.* was the rent; I spoke to the fact that the rent was paid up to Whitsunday previous, and that I continued to pay the rent on the part of my father's representatives; that I was bound to do so.

2604. The sheriffs held that a sufficient proof of the value of the rent?—No, they went further; the evidence of those witnesses spoke to its having been occupied as a separate farm having no house upon it; my evidence went to its value in connexion with Bridgelands, my father's property.

2605. How near is that to the farm of Batts?—Quite adjoining.

2606. Those farmers stated, that, taken as a separate farm, it was worth from 40 *l.* to 45 *l.* a year?—Yes.

2607. Was any question put to them as to what they would consider it worth, taken with the adjoining farm?—No, I think not.

2608. Your impression was, that, held with the other, it was worth that amount?—Yes.

2609. How came you not to put that question to those gentlemen?—I was not there as an agent, but as a witness.

2610. By whom were you cited?—By both parties, I think.

2611. On what point were you cited?—By Mr. Horne, to prove that the rent we paid continued to be paid; and by another party to prove the transaction of the grant of the lease.

2612. You were not cited by either party to speak to the value of the farm?—The question was put to me on my examination.

2613. Were you previously aware what was to be the nature of your evidence?—No, except so far as the proof of documents.

2614. Did Mr. Horne cite that?—Yes, it would be under his agency.

2615. He gave you no intimation what would be the nature of your evidence?—No, unless I might be questioned as witnesses sometimes are; it is probable that he put questions to me previous to the Court.

2616. He put none as to value?—I cannot say whether he did or not; the citation was silent upon it.

2617. Lord *Stanley.*] You have, since your father's taking a lease, actually paid a rent of 65 *l.* a year?—Yes.

2618. Supposing the lease were now to expire, would you willingly still continue to pay that 65 *l.*, a year rather than be deprived of the possession of those lands?—Not separately.

2619. Supposing it held as it is now?—If we wished to carry on Bridgelands, and that as we do just now, we would rather have it in the same condition in which it was when we entered it; then it must be newly limed, and in the same state it was in 1832.

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APPENDIX.

No. 1 (*referred to in page* 77.)

It is contracted and agreed upon between the parties following; viz. James Spittal, merchant, in Edinburgh; John Heslop, merchant, in Hawick; William Wemyss, Deputy Commissary General, No. 3, Salisbury-road, Edinburgh; Peter Wilson, manufacturer, in Hawick; Walter Wilson, baker, in Hawick; Andrew Ewen, junior, son of Andrew Ewen, farmer, in Hawick; Andrew Millar, merchant, in Edinburgh; Peter Crooks, writer of the signet, Edinburgh; John Goodfellow, grocer, in Hawick, and William Goodfellow, baker there, proprietors in life-rent of the land after-mentioned; and Robert Pringle, esquire, of Clifton, proprietor of the said lands in fee, on the one part, and the said Robert Pringle, on the other part, in manner after written; (that is to say) the said James Spittal, John Heslop, William Wemyss, Peter Wilson, Walter Wilson, Andrew Ewen, junior, Andrew Millar, Peter Crooks, John Goodfellow and William Goodfellow, and the said Robert Pringle, proprietors in life-rent and fee, as aforesaid, for their respective rights of life-rent and fee, have set, and in consideration of the tack-duty and other prestations after mentioned, hereby set and in tack and assedation let to the said Robert Pringle and his heirs, assignees and sub-tenants: But declaring that, in the event of his assigning this lease or subsetting the premises, he and his heirs and successors shall continue liable for the rent and implement of the other stipulations herein contained, incumbent on the tenant, all and whole the lands and farm of Fairnalee, and which farm is part and portion of all and whole the lands and barony of Fairnalee, comprehending the lands of Rink, Calfshaw, Nether Blackhopehaugh and others, with the pertinents, mansion-house, yards, mills, woods, fishing, dovecote and boat of Fairnalee, lying in the parish of Galashiels and Sheriffdom of Selkirk, with the teinds, parsonage and vicarage of the said whole lands, excepting always therefrom the lands of Redleys, which were sold some time ago, and are now no part of the barony of Fairnalee: And that for all the endurance and period of the lifetimes of the said James Spittall, John Heslop, William Wemyss, Peter Wilson, Walter Wilson, Andrew Ewen, junior, Andrew Millar, Peter Crooks, John Goodfellow and William Goodfellow, and for the lifetime of the longest liver of them, from and after his the said Robert Pringle's entry thereto, which notwithstanding the dates hereof is hereby declared to have taken place, and commenced on the 28th day of January last, and from thenceforth to be peaceably occupied and possessed by the said tenants during the whole foresaid period: Which tack the said James Spittal, John Heslop, William Wemyss, Peter Wilson, Walter Wilson, Andrew Ewen, junior, Andrew Millar, Peter Crooks, John Goodfellow and William Goodfellow, bind and oblige themselves and their heirs and successors, to warrant to the said Robert Pringle and his foresaids, at all hands and against all mortals; for which causes, and on the other part, the said Robert Pringle binds and obliges himself and his heirs and successors whomsoever, to make payment to the said James Spittall, John Heslop, William Weymss, Peter Wilson, Walter Wilson, Andrew Ewen, junior, Andrew Millar, Peter Crooks, John Goodfellow and William Goodfellow, equally among them, of the sum of 105 *l.* sterling, of yearly rent or tack-duty, payable at the term of Candlemas yearly, beginning the first term's payment at Candlemas next, for the possession for the year from 28th January 1835 to 28th January 1836, and yearly thereafter at the term of Candlemas in each year, with a fifth part more of the said yearly rent of liquidate penalty in case of failure, and the legal interest of the said rents from the time the same became due during the non-payment thereof: Providing always, and declaring, as it is hereby specially provided and declared, that upon the death of any of the saids James Spittal, John Heslop, William Wemyss, Peter Wilson, Walter Wilson, Andrew Ewen, junior, Andrew Millar, Peter Crooks, John Goodfellow and William Goodfellow, the share or proportion of the foresaid rent, payable to such party deceasing, or effeiring to his *pro indiviso* share and interest in the said lands hereby let, shall be payable to the said Robert Pringle and his heirs and successors in the said lands as proprietors of the fee thereof, and shall not accresce or be payable to the surviving life-renters, or to the heirs and representatives of the person or persons deceasing: And further, the said Robert Pringle (binds) binds and obliges himself and his foresaids to maintain, keep and uphold the whole houses, buildings and fences upon the said lands and farm in tenantable and habitable condition during the lease, at his own expense; and over and above the said rent to pay the whole feu-duties, cess, minister's stipend and other public and parochial burdens exigible for or furth of the subjects, without deduction or abatement therefor from the rent; and both parties bind and oblige themselves to implement their respective parts of the premises *hinc inde* to each other under the penalty of 500 *l.* sterling, to be paid by the party failing to the party performing or willing to perform over and above performance: And they consent to the registration hereof in the books of council and session, or other judges' books competent therein, to remain for preservation, and that letters of horning on six days' charge, and all other execution competent, may follow on a decreet to be interponed hereto in common form, and for that purpose they constitute

their Procurators.

In

In witness whereof, these presents, written upon stamped paper by John Cranstown, clerk to Robert Haldane, writer in Galashiels, are subscribed, (declaring before subscription that the word "Tenants" on the eighteenth line from the top is written on an erasure); by the said James Spittal at Edinburgh, the 16th day of July 1835 years, before these witnesses, John Hewat, his clerk, and Thomas John Dunn, clerk to Adam Paterson, writer to the signet; by the said Andrew Millar, at Edinburgh, the same day, before these witnesses, John Macfarlane Ritchie, his clerk, and the said Thomas John Dunn; by the said Peter Crooks, at Edinburgh, the same day before these witnesses, John Walls, his clerk, and the said Thomas John Dunn; by the said William Wemyss, at Edinburgh, the same day, before these witnesses, William Gibson Porter, residing at No. 66, Causewayside, Edinburgh, and the said Thomas John Dunn; by the said John Goodfellow, William Goodfellow, Peter Wilson, Walter Wilson, and John Heslop, all at Hawick, the 20th day of the said month of July and year last mentioned, before these witnesses, Francis Kennedy, clerk, and Ebenezer Turnbull, apprentice to James Wilson, writer in Hawick; by the said Andrew Ewen, junior, at Allars, near Jedburgh, the 21st day of the said month of July and year last mentioned, before these witnesses, Alexander Boyd, foreman, and John Henderson, slubber, both his servants, and residing at Allars mill; and by the said Robert Pringle, at the Haining, the 19th day of August and year last mentioned, before these witnesses, Hugh Lees, writer, in Galashiels, and William Cellem, butler to the said Robert Pringle, and residing at the Haining. 27 February 1837.

John Hewat, witness.
Thomas John Dunn, witness.
John M. Ritchie, witness.
Thomas John Dunn, witness.
John Walls, witness.
Thomas John Dunn, witness.
William Gibson, witness.
Thomas John Dunn, witness.
Francis Kennedy, witness.
Ebenezer Turnbull, witness.
Alexander Boyd, witness.
John Henderson, witness.
Hugh Lees, witness.
William Cellem, witness.

(signed) *James Spittal.*
Andrew Millar.
Peter Crooks.
W. Wemyss.
John Goodfellow.
William Goodfellow.
Peter Wilson.
Walter Wilson.
John Heslop.
Andrew Ewen, jun.
Robert Pringle.

No. 2 (*referred to in page* 77).

At Selkirk, the 19th day of August 1835 years, in presence of Thomas Hamilton Miller, esquire, advocate, sheriff-depute of the shire of Selkirk, compeared John Paterson, writer in Selkirk, as procurator for Robert Pringle, esquire, after designed, and gave in the disposition under written, desiring the same might be registered in the said sheriff's court books, conform to the clause of registration therein contained, which desire the said sheriff found reasonable, and ordained the same to be done accordingly, and of which disposition, the principal being written on stamped paper, the tenor follows: I, Robert Pringle, esquire, of Clifton, heritable proprietor of the lands after described, in consideration of the sum of 1,300*l.* 2*s.* 9*d.* sterling instantly advanced and paid to me by my disponees after named and designed as the adequate and agreed on price and consideration for my granting these presents: Have therefore sold and disponed, as I do hereby sell, alienate and dispone from me, my heirs and successors to and in favour of James Spittal, merchant, in Edinburgh; John Hislop, merchant, in Hawick; William Wemyss, deputy commissary general, No. 3, Salisbury-road, Edinburgh; Peter Wilson, manufacturer, in Hawick; Walter Wilson, baker, in Hawick; Andrew Ewen, junior, son of Andrew Ewen, tanner, in Hawick; Andrew Millar, merchant, in Edinburgh; Peter Crooks, writer to the signet, Edinburgh; John Goodfellow, grocer, in Hawick, and William Goodfellow, baker there, in life-rent for their several and respective life-rent rights and uses allenarly, each to the extent of one-tenth part thereof, *pro indiviso*, All and whole the lands and farm of Fairnalie, all as occupied by Andrew Redford, the tenant thereof, and which farm is part and portion of all and whole the lands and barony of Fairnalie, comprehending the lands of Rink, Calfshaw, Nether Blackhopehaugh and others, with the pertinents, mansion-house, yards, mills, woods, fishings, dove-cote and boat of Fairnalie, lying in the parish of Galashiels and sheriffdom of Selkirk, with the teinds, parsonage and vicarage of the said whole lands, excepting always therefrom the lands of Redleys, which were sold some time ago, and are now no part of the barony of Fairnalie: Declaring always, as it is hereby expressly provided and declared, That upon the death of any one of my said disponees, the life-rent right hereby created in favour of such party so deceasing shall *ipso facto* lapse, and shall not accresce to nor devolve upon the survivors; in which lands above disponed I hereby bind and oblige myself and my foresaids to infeft and seise my said disponees

27 February 1837.

disponees in life-rent as aforesaid, and that by two several infeftments and manners of holding, one thereof to be holden of me and my foresaids in free blench for payment of a penny Scots, in name of blench duty, at the term of Whitsunday yearly, if asked only, and relieving me and my heirs of the duties payable to our superiors thereof, and the other of the said infeftments of and under my said immediate lawful superiors thereof, in the same manner that I or my authors held, hold or might have holden the same, and that either by resignation or confirmation, or both, the one without prejudice of the other: And for completing the said infeftment by resignation, I hereby make and constitute and each of them, jointly and severally, my lawful and irrevocable procurators, with full power to them to compear before my immediate lawful superiors, or their commissioners in their names, having power to receive resignations and to grant new infeftments thereupon, and there for me and in my name to resign and surrender, as I by these presents resign, surrender, upgive, overgive and deliver all and whole the said lands and farm of Fairnalie, lying and described as aforesaid, and here held as repeated *brevitatis causâ*, in the hands of my said superiors, or their commissioners aforesaid, in favour and for new life-rent infeftment of the same, to be made, given and granted to the said James Spittal, John Hislop, William Wemyss, Peter Wilson, Walter Wilson, Andrew Ewen, junior, Andrew Millar, Peter Crooks, John Goodfellow and William Goodfellow, in due and competent form, acts, instruments and documents thereupon, to ask and take, and generally to do every thing concerning the premises which I could have done myself, or which to the office of procuratory in such cases is known to belong, ratifying hereby, and confirming whatever my said procurators shall lawfully do or cause to be done in the premises in virtue hereof; which lands and others above disponed, with this right and disposition of the same, and infeftments to follow hereon, I bind and oblige myself and my foresaids, to warrant to my said disponees at all hands, and against all mortals: And further, I do hereby make and constitute my said disponees, for their several and respective rights and interests, and to the extent foresaid, my cessioners and assignees, not only in and to the whole writs titles, and securities of the said lands and others made and granted in favour of me or my predecessors and authors, and whole clauses therein contained, with all that has followed, or may be competent to follow thereon; but also in and to the rents, mails and duties of the said lands and others due and payable for and furth thereof, from and after the 28th day of January 1835, and in all time coming during the subsistence of the said several and respective life-rent rights and interests hereby constituted in favour of my said disponees; surrogating hereby and substituting them for their rights and interests aforesaid in my full right and place of the premises; which assignation above written I bind and oblige myself to warrant as follows; viz. in so far as concerns the writs and evidents at all hands and against all mortals, and in so far as concerns the rents, mails and duties from my own proper facts and deeds only: And further, I hereby oblige me, my heirs and successors, to free and relieve my said disponees of all feu-duties, cess, minister's stipend, and other public burdens exigible furth of the said lands at and preceding the said 28th day of January current, being the date of their entry thereto; in virtue hereof my said deponees being bound to free and relieve me and my foresaids of the same thereafter during their possession under these presents; and in respect the fee of the said lands remains in me, I have not herewith delivered up the title-deeds of said lands, but hereby bind me and my heirs and successors to make the same forthcoming to my said disponees on all necessary occasions, upon receipt and obligation for re-delivery thereof, within a reasonable time and under a suitable penalty; and I consent to the registration hereof in the books of Council and Session, or others competent, therein to remain for preservation, and that all execution necessary may pass on a decree to be interponed hereto in common form; and thereto I constitute my procurators, attour to the end that my said disponees may be infeft and seised in the said lands hereby conveyed, and hereby desire and require you and each of you, my bailies in that part hereby specially constituted, that upon sight hereof ye pass to the ground of the said lands, and there give and deliver to the said James Spittal, John Hislop, William Wemyss, Peter Wilson, Walter Wilson, Andrew Ewen, junior, Andrew Millar, Peter Crooks, John Goodfellow and William Goodfellow, life-rent state and sasine, with real, actual and corporal possession of all and whole the lands particularly above specified, and lying and described as aforesaid; and that by delivery to them and their foresaid, or to their certain attorney or attorneys in their names, bearers hereof of earth and stone of and upon the ground of the said lands, and all other symbols usual and necessary; and this in nowise ye leave undone; which to do I commit to you and each of you, my bailies, full power by this my precept of sasine, directed to you for that effect. In witness whereof these presents, written upon this and the two preceding pages of stamped paper, by Hugh Lees, clerk to Robert Haldane, writer in Galashiels, are subscribed by me at the Haining, the 30th day of January 1835 years, before these witnesses, Archibald Douglas, Esquire, of Edderstone, and the said Robert Haldane.

(signed) *Robert Pringle.*

Archibald Douglas, witness; *Robert Haldane*, witness.

Extracted upon this and the nine preceding pages of stamped paper, by me, Sheriff-Clerk Depute of Selkirkshire. *William Lee*, D.

Written by *John Mitchell.*

Collated by *William Lee.*

Signed, 20th August 1835.

(No. 3.)

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No. 3 (*referred to in page* 86.)

It is contracted and agreed between merchant in , proprietor in life-rent of the subjects after mentioned, on the one part, and , hosier, in , on the other part, in manner following; that is to say, the said , in consideration of the tack-duty after mentioned, has set and in tack and assedation let to the said and his heirs, assignees and sub-tenants, all and whole the just and equal *pro indiviso* half or share of that dwelling-house, workshop and other buildings and ground thereto belonging, and garden at the back, lying within the liberty and territory of the burgh of , and in that place thereof called the , bounded as follows; viz. by the property belonging to on the north, the property belonging to the heirs of the late on the east, the property of , at , on the south, and the on the west; also the just and equal *pro indiviso* half or share of all and whole that tenement of house and yard at the back thereof, situated at the town-head of , lying, bounded and described as follows; viz. by the house and yard of , merchant in , on the east, by the garden-ground belonging to , of , on the south, by another house and yard also belonging to the said , on the west, and by the on the north, with the whole parts, pendicles and pertinents of the said subjects, as the same are presently occupied and possessed by the said and others, and that for and during the natural life of the said from and after the 28th day of January last, 1835, which is hereby declared to have been the term of the said entry to the said subjects, and thenceforth to be peaceably possessed by him and his foresaid during the foresaid period; in the peaceable possession of which subjects the said binds and obliges himself to maintain and defend the said and his foresaids during the currency of this tack, at all hands, and against all deadly, as law will; for which causes and on the other part, the said binds and obliges himself, his heirs, executors and successors whatsoever, to pay to the said and to his assignees, the sum of 10*l.* 10*s.* sterling of yearly rent, and that upon the 28th day of January yearly, beginning the first term's payment thereof, being 10*l.* 10*s.* on the 28th day of January 1836, and the like sum of 10*l.* 10*s.* on the 28th day of January 1837, and so forth, yearly, during the foresaid period, with a fifth part more of each payment of liquidate penalty for each term's failure, and the legal interest of the said rents after the respective terms of payment during the not-payment of the same: And the said further binds and obliges himself and his foresaids immediately to insure the said subjects against fire in the name of the said in an established fire insurance office to the extent of and yearly to pay the premium thereof. Farther, to keep the said subjects in good and proper repair, and to pay the public or parochial burdens exigible for or furth of the same, all during the whole currency of the Lease; and both parties oblige themselves and their foresaids to perform their respective parts of the premises to each other, under the penalty of 50*l.* sterling, to be paid by the party failing to the party performing or willing to perform, over and above performance. In witness whereof these presents, written upon this and the two preceding pages by apprentice to writer, in are subscribed by the said at the 13th day of April, 1835 years, before these witnesses, the said and writer in and by the said at the 15th day of the said month of April and year last mentioned, before these witnesses burgess in and writer in . The place and dates of signing, with the names and designations of the witnesses being inserted by the said

Witness.

Witness.

Witness.

Witness.

Martis, 28° die Februarii, 1837.

MEMBERS PRESENT.

Sir Hugh Campbell.	Lord Stanley.
Mr. Warburton.	Mr. W. Campbell.
Sir William Rae.	The Lord Advocate.
Viscount Stormont.	Mr. E. Buller.
Mr. Fox Maule.	Mr. Bingham Baring.
Mr. G. Ferguson.	Sir Thomas Fremantle.
Mr. Divett.	

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. *Peter Rodger*, called in; and further Examined.

Mr. *Peter Rodger*. 28 February 1837.

2620. *Chairman.*] YOU stated yesterday that of the 1,995 *l.* paid for the land of Batts, a part was paid by Dr. Anderson to your father?—Yes.

2621. And a part paid by yourself to your father?—Yes.

2622. How came Dr. Anderson to be employed in the transaction?—Just as a friend of my father's.

2623. How came you not to conduct the whole transaction?—For the reason that I was acting as political agent at the time, and that I should be acting in two capacities, both for my father as the seller, and as political agent; that was the reason.

2624. Did you conduct the property transaction with your father?—I was present during the discussion as to the grant of the lease.

2625. Was that at the same time as the discussion as to the price of the land?—No.

2626. At the time the land was bought was there any idea that a lease would be given back?—No.

2627. Still you received a part of the purchase-money?—Yes, 650*l.* was paid by Dr. Anderson, and I received the balance in the month of April following.

2628. Are you to be understood to say that you conducted part of the transaction?—I was present during the transaction as to the lease.

2629. But you had nothing whatever to do with the purchase?—Nothing.

2630. Was your father a political agent for the tory party at this time?—No.

2631. Did he ever act as agent for the tory party?—No.

2632. You stated that you considered the farmers employed to value this land as good judges?—They were practical farmers.

2633. And that taking out of consideration the next farm, Bridgelands, those farmers valued it at 40*l.* to 45*l.* a year?—Yes.

2634. Under those circumstances do you consider that a fair valuation?—My impression was, that they did not speak of the value as connected with Bridgelands.

2635. As disconnected with Bridgelands, do you think they gave the fair value?—No, I think they were rather low.

2636. They all concurred in fixing that rate?—To a trifle.

2637. No evidence of any kind was led to prove that it was of more yearly value than they stated it at?—Except what came out in my examination.

2638. Which was solely in relation to its value, taken in connexion with Bridgelands?—Yes.

2639. And taken in connexion with Bridgelands, you said it was worth 65*l.* a year?—Yes.

2640. At the time those parties made the purchase of the land, they had no idea they would get 65*l.* a year for it?—No, I do not know that they had.

2641. Had they persons to value the land?—I am not aware that they had.

2642. They

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Mr. *Peter Rodger*.

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2642. They would probably take some pains to ascertain the value before they purchased it?—Mr. Horne transacted the business for them of the purchase.

2643. Do you suppose the marketable value of the land was proved by the evidence given?—No, I think they were too low in their value, distinct from Bridgelands.

2644. If three practical farmers in the neighbourhood valued it at that, and if no persons were found who put a higher value on it, do you not suppose that was the value that it would bring in the market?—That is matter of opinion, so much that I am not prepared to answer that question.

2645. Was that the value which persons well acquainted with the lands, and living in the immediate neighbourhood, as practical farmers, put upon it?—Yes.

2646. And those persons you considered good judges?—Yes, I considered their knowledge and judgment good.

2647. How many years' purchase does land bring in that neighbourhood?—I should say between 30 and 40 years' purchase.

2648. Does it bring more than 30 years' purchase?—Yes, I should think more than 30 years' purchase.

2649. Do you think that land was worth more than 30 years' purchase?—No.

2650. Does land in the neighbourhood of Selkirk generally sell for more than 30 years' purchase?—That depends upon the situation, some spots do and some less.

2651. Generally speaking, does land near Selkirk sell for more than 30 years' purchase?—I should think it would, rather above than below.

2652. Mr. *Fox Maule.*] Did you ever know an instance of any land in the neighbourhood of Selkirk selling for above 30 years' purchase?—Yes.

2653. Name an instance?—James Scott's farm, in the neighbourhood of Broomhill.

2654. *Chairman.*] When was that sold?—Perhaps 15 years ago; from 10 to 15 years.

2655. What is the extent of it?—Three acres or four acres.

2656. Mr. *W. Campbell.*] Was it built upon?—No.

2657. Was that in the immediate vicinity of the town of Selkirk?—Within three-quarters of a mile of it.

2658. Sir *William Rae.*] How many years' purchase did it fetch?—I should think above 30 years' purchase; I did not act in the sale, but I have heard that.

2659. *Chairman.*] Do you know that it was above 30 years' purchase?—Yes.

2660. You state that you know that as a fact?—Yes.

2661. Do you know of any cases of land near Selkirk selling for under 30 years' purchase?—Yes, there are cases.

2662. Can you mention several cases?—There were lands sold by John Henderson, in the neighbourhood of Selkirk.

2663. You know more cases of lands selling under than above 30 years' purchase?—It is much the same, I should think.

2664. Supposing this land to have been of the value those farmers stated, what would have been its price at 30 years' purchase?—One thousand three hundred and fifty pounds, I think.

2665. At the valuation the farmers put upon it, it was a very bad investment?—Yes, according to that statement.

2666. By the rent they have received from your father, it was not a bad investment?—No.

2667. At 30 years' purchase 65*l.* a year would have brought it very much to the price they gave for it, would it not?—It would have brought it to 1,950*l.*

2668. At that time the purchasers had no idea they could get that for it?—I cannot say what they thought they should get for it.

2669. Did not you say that that value depended upon its being held with Bridgelands?—Yes, that we were enabled to give that value.

2670. No other person would have taken it at that price?—No, I think not.

2671. It was not separated at that time, but it might be held without Bridgelands?—Yes.

2672. But they gave a price which, at 65*l.* a year, was a little above 30 years' purchase?—Yes.

2673. Then their getting 65*l.* a year depended not only on its being taken in connexion with the neighbouring farm, but the neighbouring farmer giving a higher

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higher price than it would have fetched in the market?—Yes; and the state the land was in at the time, being newly limed at the time of the entry.

2674. Unless it had those two advantages of being taken in connexion with the neighbouring farm, and the uncertainty of that farm being employed, to give a higher rent than it would have brought in the market, it would not have been worth 65 *l.* a year?—No.

2675. In whose hands are the lands of Batts now?—I manage it for myself, and the other representatives of my father.

2676. Your father is dead since?—Yes.

2677. To whom did the lease devolve on your father's death?—We had all an interest in it; there are two brothers, a sister, and myself; I manage it for the others and myself.

2678. Have you a lease of it from them?—No; just a continuation of my father's lease.

2679. Had your brothers and sister no share in it whatever?—I account to them for it; my two brothers are abroad, and my sister at home.

2680. Have they let you this farm since?—No.

2681. Did you not state yesterday, that you had taken a lease of it at 65 *l.* a year?—My father had taken a lease of it during his lifetime.

2682. Did not you state, that you yourself since took a lease of it?—No, not to my recollection.

2683. You did not state that you yourself since took a lease of it?—No.

2684. You have got no lease of it?—No.

2685. Have your brothers and sister any interest in it now?—Yes, just equally with me.

2686. Have you made any arrangement with them, by which you have the management of the farm?—Yes, as to the management.

2687. Was there ever any valuation of that farm except that taken by the farmers who were adduced in evidence?—At my father's death there were two farmers appointed to look at the value of the crop upon it for the legacy duty.

2688. Was James Grieve, of Howden, one of those?—Yes.

2689. Was James Wilson, of Lindean, another?—Yes.

2690. What was the object of their looking at it?—To say what was the value of the crop, to fix the duty payable to government.

2691. Did they speak of nothing else but that?—No.

2692. What did they state was the value of the crop?—The fields were some of them in different crops, some in grass, and so on; it was my way of making up an inventory of duty to government; they spoke to the moveables.

2693. They spoke to nothing but the value of the crop upon that occasion?—No.

2694. Did they not state any thing as to the yearly value of the farm?—No.

2695. Do you hold the farm now for yourself, by an arrangement with your brothers and sister?—No, just the same as I have done from my father's death.

2696. In the year 1833 there were five gentlemen enrolled, were there not?—Yes.

2697. Who made out the disposition for those five gentlemen?—Mr. Horne, he drafted it, and my clerk copied it, I think.

2698. Who made out the lease that was given to your father?—It was drawn by one of the proprietors, Mr. Erskine; it would be copied by my clerk, very likely.

2699. What is Mr. Erskine?—He is a writer in Melrose.

2700. Is he a political agent in Melrose?—Curle and Erskine are.

2701. Is that James Curle who is also enrolled here?—Yes.

2702. The next year there was a sixth person enrolled upon those lands; Mr. Robert Keith Pringle, brother to the Member for the county?—Yes.

2703. Who made out his titles?—Mr. Horne.

2704. Do you pay the rent?—Yes.

2705. To whom do you pay the rent?—To Curle and Erskine.

2706. They receive it for those parties?—Yes.

2707. Do you know whether there is any bond or security over the property?—None.

2708. You do not know that it is burdened in any way?—I am not aware of any burden.

2709. Did

2709. Did you not state yesterday that since that time you had taken a lease of the farm yourself, at 65*l.* a year?—No.

2710. Do you pay the rent regularly to Curle and Erskine?—Regularly.

2711. Have you any receipts for rent with you?—No.

2712. Have you them at home?—Yes, at Selkirk.

2713. You can produce them, if required?—Yes, the rents are paid up to Martinmas.

2714. Mr. *Fox Maule.*] Did you ever receive any abatement of rent?—No.

2715. Sir *William Rae.*] You mentioned that 650*l.* was paid to Dr. Anderson; why was not the rest paid at that time?—We had to produce search of incumbrances, to show that the property was clear, that there was no burden, and whenever we produced that, the rest was to be paid.

2716. Did you produce that?—Yes.

2717. Did you carry this to Edinburgh with you?—Yes.

2718. Did you then receive the remainder of the price?—Yes.

2719. You say the lease was granted a considerable time after the purchase?—Some days after the purchase.

2720. Was the length of the lease 12 years?—Yes.

2721. Was there a particular rotation of crops prescribed in the lease?—Yes.

2722. Your father is dead?—He is.

2723. And you and your brothers and sister succeeded to the lease?—Yes.

2724. It is in that character you have paid the rent, as heir to your father?—Yes.

2725. You account for the profits to your brothers and sister?—Yes.

2726. You said that Messrs. Erskine and Curle are part owners of this property?—Yes, they are.

2727. You pay the rents to them as owners, and act for the others?—Yes.

2728. Lord *Stanley.*] You say there is no incumbrance upon the property in question; was there any incumbrance upon the property previous to the sale?—There was.

2729. To what amount?—With part of Bridgelands, there was a bond, I think, for 1,200*l.*

2730. Was it in consequence of the necessity of clearing off that incumbrance, that the payment of part of the purchase-money was postponed?—Yes, we had to show there was a discharge as to these lands.

2731. As soon as you proved the discharge, you received the remainder of the purchase-money in cash?—Yes.

2732. And no bill passed at any time?—No.

2733. Mr. *Fox Maule.*] What are the public burdens annually paid upon that property?—There is the stipend.

2734. How much is that?—I should say, averaging from 30*s.* to 40*s.* a year.

2735. How much the schoolmaster?—None.

2736. Is there any other public burden?—None, I think.

2737. The proprietors, of course, pay those public burdens?—No; it is part of our lease that we are to pay the stipend; if there are any other burdens they are to pay them.

2738. Do you pay 67*l.* a year?—If that amounts to 2*l.* we do.

2739. Your real rent that you pay for that property is either 66*l.* 10*s.* or 67*l.* a year?—Yes.

2740. Sir *William Rae.*] At the court before the sheriff, was any thing like collusion alleged to exist or offer to be proved as against the purchasers and the tenant in making the agreement, or in the terms of that lease?—It was attempted to make out in the Registration Court that the price was regulated by the rent to be given.

2741. Was it asserted that a larger rent had been agreed upon with a view to the making qualifications than otherwise would have been given?—Yes, that was alleged.

2742. Was it proved?—No.

2743. Mr. *W. Campbell.*] You are quite sure there was no understanding as to the amount of rent to be paid by your father at the time he sold the property to the five individuals?—None.

2744. Mr. *Fox Maule.*] You say the lease was granted a few days after the sale was completed; was it a week or a fortnight?—I should say three or four days.

 2745. They

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2745. The farm of Bridgelands belonged to your father?—Yes.

2746. Mr. *W. Campbell.*] If any other person besides your father had rented those lands, would he have been inclined to pay 65 *l.* a year?—No, it would have been too high.

2747. Do you think in that case the land would have been worth 1,995 *l.*?—No, they would not have the same chance to get that.

2748. The transaction you say was conducted between the two political agents of the party?—Between Mr. Horne and Dr. Anderson, for my father.

2749. Did Dr. Anderson ever act as a political agent?—No.

2750. Is he a partisan?—He supports the conservative party in Selkirkshire.

2751. Is he zealous in the cause?—He is pretty zealous; he is a supporter of the cause.

2752. There is a difference between persons; is he an active agent, or does he merely give his vote?—He may go further than merely giving his vote, but not at all as a paid agent.

2753. Mr. *Fox Maule.*] Does he canvass for the sitting Members?—No, I should think not.

2754. Mr. *W. Campbell.*] Has he taken an active part in increasing the number of votes for the party for which he votes?—Only in one instance, that I know of; he sold a property of his brother to the conservative party.

2755. How many votes were made upon that?—I think there were five.

2756. *Chairman.*] Where was his brother at the time?—I think he was in Ireland, with his regiment.

2757. What are the brother's politics?—I have understood he is a whig.

2758. Did his brother know who were the five gentlemen to whom that property was sold?—I do not know.

2759. You have no idea?—No.

2760. Did his brother know it was to be sold to five proprietors?—I do not know.

2761. You are quite sure you never heard that?—Dr. Anderson, in a jocular way, I think, said something about his regret that it was sold to the conservatives, or something of that kind.

2762. You heard that from Dr. Anderson?—Yes.

2763. Have you heard him say that his brother regretted that it was sold to the conservatives?—Yes.

2764. Were you ever told that he did not state to his brother the purpose for which it was bought?—I did not go minutely into the transaction with him, into those particulars.

2765. His brother was with his regiment in Ireland?—Yes.

2766. Did he get his brother's authority for the sale of the property?—I have understood so.

2767. From whom did you understand that?—From Mr. Horne.

2768. Do you know whether that led to his brother's saying that if he was inclined to sell he would get him a good purchaser?—I do not.

2769. Did you have any conversation with Dr. Anderson upon the subject?—No, nothing particular, that I recollect.

2770. Do you know that he wrote to his brother, asking his permission to sell the property, but did not mention the purpose for which it was sold?—I do not know whether he mentioned the purpose or not.

2771. But you say his brother was angry at his having sold it to the conservatives?—I have heard the doctor say that afterwards; not that he was angry, but that he regretted it, or something of that kind.

2772. Dr. Anderson said this jocularly?—Yes.

2773. What was the inference you drew from what he stated jocularly?—That Dr. Anderson's brother being of opposite politics to the gentleman who acquired it, he regretted it.

2774. And that if he had known the purpose for which it was to be sold, he would not have consented?—I do not know whether he meant that or not.

2775. Did you ever hear that?—No.

2776. Not from Dr. Anderson or Mr. Horne?—No.

2777. Mr. *W. Campbell.*] Did you never hear that Mr. Anderson had written to forbid the sale?—No.

2778. *Chairman.*] Did you ever hear that he was angry at the sale?—Never, further than saying he regretted that it had been sold to the conservatives.

2779. Then Dr. Anderson sold this property and enrolled five conservatives upon it, which his brother afterwards regretted?—Yes.

2780. Viscount *Stormont.*] Do you know whether Dr. Anderson had general instructions from his brother to conduct his affairs as he thought best during his absence?—Yes, I am aware of that.

2781. Had he instructions from his brother to sell his property for him?—I do not know whether it amounted to his selling it; he drew the rents for his brother, and let it for his brother.

2782. Was any statement to the effect, that Dr. Anderson had instructions to act for his brother, made in the county?—Not that I can recollect.

2783. Sir *William Rae.*] Adverting to the estate of Batts, can you state the precise day of the purchase?—I should say the purchase was made on the 25th of January 1833.

2784. Was it concluded on that date?—No; on that day the sale was made, but the disposition was signed on the 30th.

2785. Does it consist with your knowledge, that any purchase was made with a view to political purposes prior to that date?—Yes.

2786. What was it?—A property in Galashiels.

2787. What was the date of that purchase?—The 22d of January.

2788. Have you any circumstances that satisfy you of that fact?—Yes; it was offered by public sale, and purchased by private bargain afterwards; I was previously aware that the property was for sale.

2789. By whom was that purchased?—By Thomas Wilson and James Wilson, in Hawick.

2790. What party were they connected with?—The whig party.

2791. Were there votes made upon that property?—Yes.

2792. And registered?—Yes.

2793. When?—In 1834.]

2794. Why were not they registered sooner?—Because it was a long lease, and required a twelvemonth's possession.

2795. Was that the very first purchase made of a political description in the county of Selkirk to your knowledge?—To my knowledge, it was.

2796. Any statement inferring that the liberal party were induced to make these purchases in consequence of the like acts on the part of the other side, is not correct?—I should say not.

2797. *Chairman.*] For whom did Thomas Wilson and James Wilson make this purchase?—For themselves.

2798. Is Galashiels, part of it, in the county of Roxburgh?—Yes.

2799. Did those two gentlemen live in the county of Roxburgh?—Yes.

2800. How do you know they made the purchase for political purposes?—Because it was communicated to me that Thomas Wilson, in the beginning of January, had said the majority for Mr. Pringle, of Clifton, was too small, and that they must purchase largely to make it up.

2801. Who told you that?—Dr. Anderson.

2802. That is the same gentleman who has been active in making votes for your party?—Not active; it is the gentleman who transacted the business of Batts.

2803. All the evidence you have of this vote being bought was the statement of a keen partisan on your side?—The statement of Dr. Anderson.

2804. Who is a keen partisan?—A keen supporter of the party; and the purchasers being subsequently enrolled upon them.

2805. There is no doubt of their having acquired the property; the question is as to their having acquired it for political purposes; the only evidence you have of its being acquired for political purposes is the statement of Dr. Anderson?—The circumstance of their being enrolled by the political agent of the party, and their voting for Mr. Pringle, of Clifton, the year afterwards.

2806. Did Dr. Anderson tell you that was the object of the purchase?—They had not bought it then.

2807. Do you know any thing of the price paid for that property?—No.

2808. When did Dr. Anderson hear Wilson say this?—I should say about the first week of January 1833.

2809. He stated that to you at the time he heard it?—Yes.

2810. If this property had been bought for a political purpose, could not the persons have purchased property where twelve months' possession was not required,

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required, and have been registered the same year?—I have no doubt they could have found other property.

2811. Was it not natural to suppose they would prefer property which might be registered that year?—If they wished to get early upon the roll.

2812. Do persons who buy property for political purposes wish to get early upon the roll?—I should think so.

2813. It would have suited those persons better to purchase other property?—Yes.

2814. And such properties were to be found?—I cannot say as to that; it was just the very beginning of this.

2815. Were such properties to be found in the county of Selkirk at the time?—I cannot say.

2816. This property had been advertised for public sale?—Yes.

2817. Do you know the price afterwards given for it?—No.

2818. Do you know the price that was asked?—No.

2819. It was not sold for political purposes?—No; it was advertised for sale to the highest bidder.

2820. What was the nature of the property?—Houses.

2821. What was the value of it?—It qualifies two; it must therefore be somewhere above 20*l.*

2822. *Lord Advocate.*] Do you know how much above 20*l.*?—I do not know.

2823. Do you know whether it was a good or a bad purchase?—I do not.

2824. Have you any other reason for saying it was for a political purpose than that the purchaser said it was desirable to increase Mr. Pringle of Clifton's majority?—Yes; that was one of the reasons, and their having been subsequently enrolled, and their voting for Mr. Pringle.

2825. If it was a good purchase was there any reason why those persons might not purchase it on other grounds?—Mr. Thomas Wilson is a keen partisan in the county of Roxburgh, and Mr. James Wilson is a political agent in Hawick, in Roxburghshire.

2826. Was there any reason why persons residing in Hawick should not purchase property on sale in the county of Selkirk if it was a good purchase?—It is not very common.

2827. Have you not known instances of persons residing in Hawick purchasing in Selkirk?—Yes; but not many instances.

2828. If any other person had bought that property, would you have said it was bought for political purposes?—Not until I saw the circumstances; if there had been no contest going on in the county and a person bought it.

2829. If it was a good purchase might not any person have bought it?—Yes, certainly.

2830. Mr. *W. Campbell.*] Are you acquainted with the political state of Roxburgh?—In some measure.

2831. You say that Mr. Wilson is a political agent there?—Yes, in the Hawick district.

2832. Had any sales for political purposes been made in the county of Roxburgh?—I was not aware of any.

2833. Should you have heard of them if they had been going on there?—It is possible I might.

2834. Viscount *Stormont.*] Where had Mr. Wilson been when Dr. Anderson met him, and they had this conversation?—It was either after a dinner given by Mr. Pringle of Clifton, or given to Mr. Pringle of Clifton, after his election in 1832.

2835. Did Mr. Wilson state to Dr. Anderson, that it had been given out at the dinner that it was the intention of the party to make as many votes as they could?—No, those were not Mr. Wilson's words; I understood it was this, that he said Mr. Pringle of Clifton's majority was too small, and that they must purchase largely to increase it.

2836. Was this only Mr. Wilson's opinion, or the opinion of the party?—I cannot say.

2837. Mr. *Maule,*] They purchased this by public advertisement, after it had been advertised by public auction?—Yes.

2838. Did you understand that there were any other offers made for it than Mr. Wilson's?—I cannot say.

2839. There might have been other offers?—Yes.

2840. You

2840. You consider it as purchased after a fair notice to the public that it was to be sold?—Yes.

2841. Do not you consider the qualifications made upon property to be of a character tending more to give them a colourable political partisanship where votes are made upon properties sold by private contract, without the public knowing the properties were to change hands?—There is no difference except by the publicity given.

2842. You consider the publicity given as giving a fairer character to the vote than in cases in which the property has been secretly sold?—Not fairer, but it lets us know who the purchaser is, if the purchaser purchases it himself, but it is very common for a person to appear at a public sale and to purchase, and to give the name afterwards.

2843. Suppose Mr. Wilson had bought this property without the public at all knowing it was to be disposed of, would it not have appeared to you that Mr. Wilson had bought it for political purposes rather more strongly than buying it in the manner in which he did?—I cannot say, unless there was some secret motive in the transaction.

2844. Secrecy in transactions of this kind would naturally lead you to conclude there was some private political object to be gained by the transaction?—If it is a secret transaction.

2845. Sir *William Rae.*] You say you were not prepared to give any thing for this purchase, if it had gone to public sale?—No.

2846. The party to whom you belonged were not at the time in the practice, nor had come to the resolution, of making purchases in Selkirkshire?—It was agitated after Mr. Wilson's declaration to Dr. Anderson, but no purchase was made.

2847. When you heard of this purchase, did you communicate it to Mr. Horne?—I did.

2848. Why?—I thought it was right to put him upon his guard.

2849. Was the resolution then come to, to make purchases on the other side?—Yes, soon afterwards.

2850. It was the purchase by Wilson that led to that proceeding?—That confirmed the former resolution to purchase.

2851. Did not the statement of Wilson to Dr. Anderson first suggest the idea of it?—I should say so.

2852. When did the conversation between Dr. Anderson and Wilson occur?—The first week in January.

2853. This purchase was concluded, when?—On the 22d.

2854. Was any other purchase made in Selkirk at this time; do you know of one by a person of the name of Spence?—Yes; Mr. Spence, of Melrose.

2855. What is he?—A writer in Melrose.

2856. What was the date of that?—In 1833, from the 25th to the 30th of January.

2857. Mr. Spence is one of the political agents for the whig party?—Yes.

2858. Mr. *W. Campbell.*] You have stated that it was under consideration, and that the determination to purchase was confirmed after your communication with Mr. Horne?—After the actual purchase by Wilson.

2859. At what time was it under consideration whether lands should be purchased or not?—I should say about the 8th or 9th, or 12th of January.

2860. It was confirmed when you heard that Mr. Wilson had made that purchase?—Yes.

2861. *Chairman.*] You state that Mr. Wilson made this communication to Dr. Anderson after the dinner of Mr. Pringle of Clifton's friends?—Yes.

2862. Was that a dinner given after his election?—Yes.

2863. It was an election dinner, after his return?—I think it was; it was given to him or by him.

2864. It was the evening after that dinner that Dr. Anderson saw Mr. Wilson?—Yes.

2865. Do you recollect what o'clock it was?—No, he did not mention that.

2866. Where did he see Mr. Wilson?—Near Mitchell's Inn.

2867. There was a large party at that dinner?—I should think so.

2868. Mr. *Maule.*] On what day did this dinner take place?—Somewhere about the 9th or 10th of January.

2869. *Chairman.*] All that Mr. Wilson said to Dr. Anderson was, that it was necessary they should buy land?—That they should buy largely.

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2870. There was no other evidence of what was doing by the liberal party?—Not at that time.

2871. Are you in the habit of going into the county of Roxburgh?—Occasionally.

2872. You know the political agents there?—Yes.

2873. You know what is going on there?—Not particularly.

2874. Could properties have been purchased in Roxburgh to acquire the franchise without your hearing of it?—Yes.

2875. Do you know whether persons bought property that year for political purposes?—At that time I knew of but little going on in Roxburghshire.

2876. Do you know that any property was bought for political purposes that year in Roxburgh?—Not to my knowledge.

2877. Viscount *Stormont.*] Do you know that there were none?—I do not.

2878. *Chairman.*] Do you believe there were none?—I believe there were none.

2879. When you say you have reason for believing this land was bought for a political purpose, would it not have been satisfactory to settle your doubts, by inquiring whether Mr. Wilson had done that which it was natural to suppose he would do in his own county?—I was aware he was on the roll already.

2880. He was also a political agent?—Yes.

2881. If he held this practice with those motives, would it not be natural to suppose he would do it in his own county?—This was to support his own party in another county.

2882. Does not a political agent naturally commence by supporting his party in his own county?—He generally does.

2883. Was it not likely he would begin rather in his own county than in another?—The reason he gave was, that the majority was so small.

2884. He was the first you knew of that commenced it?—Yes.

2885. You believe him to have been the originator of that system?—I cannot say as to originator, but the two brothers made the first purchases in this county.

2886. They began that system?—They began that system by making a purchase.

2887. If they began the system by making a purchase, was it not natural they would begin it in their own county, if it was for a political purpose?—No; the reason given was, that the majority was so small in the county of Selkirk.

2888. Had Mr. Wilson any connexion with the county of Selkirk?—Not as agent.

2889. Had he any other connexion with the county of Selkirk?—None whatever.

2890. Still he began that system in a neighbouring county, with which he had no connexion, before he began it in his own county, for which he was political agent?—Before I knew that he began it, my belief was that he had made no purchase in the county of Roxburgh at the time he made the purchases in the county of Selkirk.

2891. Sir *Hugh Campbell.*] Do you know that from your own knowledge?—No, I do not know it.

2892. Mr. *W. Campbell.*] Have you made any settlement with your brothers and sister of any profit on the land of Batts?—By my father's will I was appointed trustee, and I act as their agent.

2893. Have you had any settlement with you brothers and sister of any profit on the land of Batts?—None.

2894. Do you keep any account of the transactions between yourself and your brothers and sister upon this farm?—Yes.

2895. But you have never yet had any settlement with them?—No.

2896. Have you laid any such account before your brothers and sister?—Yes, my brother William, I have.

2897. Viscount *Stormont.*] Your brothers have been abroad?—My brother George is abroad, William is in London now.

2898. Mr. *W. Campbell.*] What is the nature of this account between your brothers and sister and yourself?—The charge against the farm, and the proceeds of it.

2899. *Lord Advocate.*] Do you charge yourself with the payment?—I take credit for the rent paid.

2900. Did you charge yourself with any rent payable to yourself?—No.

2901. Did

2901. Did you charge yourself with any thing due for the profits?—I just showed the expenditure upon the farm, and the proceeds arising, and the balance.

2902. What were the proceeds of Batts?—They are kept along with Bridgelands.

2903. They are mixed together?—Yes.

2904. You have not separated the profits of Batts from those of Bridge lands?—I could not at this time, for the accounts were kept jointly with Bridgelands.

2905. Mr. *Fox Maule.*] You have never accounted with your sister and brothers?—There never has been any settlement.

2906. *Chairman.*] Has there been any money paid by you to your sister?—Yes.

2907. As the profits of this farm?—As arising from the proceeds of those farms, I have given her money arising from the proceeds of those farms.

2908. What are the proceeds of the two farms?—I cannot speak from memory just now.

2909. You say you have had a settlement with one of your brothers?—No; I have given him an idea how the account stands.

2910. Mr. *Warburton.*] What do you mean by an idea?—Showing how the balance was for or against the farm.

2911. *Chairman.*] In that account, did you include both farms together?—Yes.

2912. Mr. *Warburton.*] Was there a regular debtor and creditor account?—Yes.

2913. Mr. *Fox Maule.*] Was the balance in your brother's favour or in yours?—The account embraces all the transactions connected with Bridgelands and Batts.

2914. Was the balance of the account which you have given to your brother in your favour or in your brother's?—My brother has only a joint interest with us; I will mention the nature of the account; I just take credit in the first place with all the outlay upon the farm, servants' wages, the price of stock put in, and all those sort of expenses, and I show the balance between us.

2915. You state that you, according to your father's will, account to your brothers and sister for the proceeds of this farm?—Yes.

2916. You have been asked whether you ever came to any settlement with your brothers and sister on the proceeds of these farms?—No adjusted settlement.

2917. You stated that you had an account with your brother William of the proceeds of those farms?—I communicated to him an abstract of the account.

2918. You have not rendered him any particular account of the proceeds of that farm?—No.

2919. Nor to your sister?—No.

2920. *Chairman.*] Does any body reside on the farm?—I do, on the farm of Bridgelands.

2921. Mr. *Fox Maule.*] You have no monies for which you have accounted for those farms to your brothers and sister since you had the management of them?—I have paid money to my sister on account of them.

2922. Then you are indebted to your brothers on account of this farm?—If I am to enter into all these little matters of family arrangements I must do so.

2923. Sir *William Rae.*] Have the joint farms produced a profit or not?—They have produced a profit.

2924. Then of those profits each of your brothers and your sister are entitled to a share?—Yes.

2925. *Lord Advocate.*] What is that joint profit?—I should wish to know whether I am bound to answer all these particulars of family matters.

[*The Witness was directed to withdraw.—The Witness was again called in.*]

2926. *Chairman.*] Do you remember the case of the County Inn at Selkirk?—Yes.

2927. Ten individuals were registered on that in 1833, were there not?—Yes.

2928. Was there not another in the following year?—Yes.

2929. There were also two tenants registered upon it?—Yes.

2930. Did you act as agent in the purchase of that inn?—No.

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2931. Who acted as agent in the purchase of it?—Mr. Horne.

2932. Were you acquainted with the circumstances of the purchase?—I was present when it was purchased.

2933. Will you refer to the names stated in the former minutes, and state whether they are correct?—Yes, William Boyd was in 1834.

2934. From whom was it purchased?—A person of the name of Wilson.

2935. Who are the persons who at present occupy it?—Mr. Mitchell and his son.

2936. Do you remember the price given for it?—One thousand nine hundred and ninety-five pounds, I think.

2937. The same price as was given for Batts?—Yes.

2938. Did you take any part whatever in the purchase?—I was present when Mr. Horne bought it from Wilson, when he bargained about the price.

2939. Did you take any part yourself in it besides being present when Mr. Horne made the purchase?—No.

2940. Who made out the titles to that property?—I drew out the disposition after it was purchased.

2941. The disposition was from Wilson to those ten individuals?—Yes.

2942. One disposition, taking the property jointly to them?—Yes.

2943. Did you ever see a disposition of that nature before made to a number of individuals who had no connexion with one another?—I never saw one to ten individuals.

2944. Did you ever see one to several individuals?—I have seen one to three or four individuals.

2945. Previous to 1833?—Yes.

2946. Will you state an instance of that?—In the case of this inn, Wilson purchased it from four individuals, I think.

2947. Were they joint proprietors before?—Yes.

2948. Did you see their title?—Yes.

2949. They had a title to that property jointly for themselves?—Yes.

2950. Had they purchased it?—They bought it from a Mr. Dun, who built the property.

2951. When did they buy it?—It must have been upwards of 20 years ago, I think.

2952. Who were those four individuals?—Dr. Clarkson, Mr. John Anderson, Mr. Mill and Mr. Andrew Henderson; I am not sure whether he was the party indeed, or his two sisters.

2953. Where did those parties reside?—Dr. Clarkson resided in Selkirk; Mr. Anderson, in Selkirk; Mr. Mill, at Faldownside, in Roxburghshire, and Mr. Henderson, in Selkirk.

2954. Do you know where that disposition is now?—It is amongst the titles.

2955. In whose possession?—Mr. Horne's, I should think.

2956. You are certain those four individuals acquired their title to themselves for their own behoof, by purchase?—Yes.

2957. Was the sum of 1,995*l.* paid for that property?—I saw Mr. Horne pay it; there was a debt of 1,680*l.* upon it, and I saw Mr. Horne pay that to the bond-holders.

2958. To whom did he pay the other 315*l.*?—Mr. Wilson's agent had a claim, I think, of 150*l.* against Wilson, the seller, that was paid to him.

2959. To whom was the rest paid?—To Mr. Wilson himself.

2960. You saw that paid also?—I paid it.

2961. When did you pay it?—Some months after the purchase.

2962. Who paid the 150*l.* to Wilson's agent?—I paid it.

2963. Mr. Horne paid the 1,680*l.*?—Yes.

2964. That burthen was paid off?—Yes.

2965. Is there any burthen upon the property now?—I am not aware of any.

2966. Can you say there is none?—I should say there is none.

2967. Who has managed the property since the purchase?—I collected the rents to Whitsunday last.

2968. Have you accounted for them in any way?—Yes.

2969. To whom have you accounted for them?—To Mr. Horne.

2970. Have you paid all the rents over to Mr. Horne?—Yes.

2971. What is the rent paid for the property?—One hundred and twenty pounds a year.

2972. That

2972. That 120 *l.* a year was bought for 1,995 *l.*?—And an annuity of 30 *l.* to Wilson during his life.

2973. Was that considered a good purchase?—It depended very much upon Mr. Wilson's life; it was a speculation in that respect.

2974. You receive the rent from the tenant?—Yes.

2975. Do you give him an abatement?—None.

2976. What age is Mr. Wilson?—I should say between 60 and 70.

2977. Does the rent appear to you to be a fair rent?—Yes, a fair rent.

2978. Does it appear to you to be a good investment for that money?—Just a return for it; it is the annuity that puzzles me to say whether it is a good investment or not.

2979. You stated that property in Selkirkshire generally sold for about 30 years' purchase?—This is house property.

2980. What does house property generally sell for?—I am not prepared to say.

2981. Does it sell for more or less than land?—Less than land.

2982. Much less?—It depends upon the newness of the houses and the state of the repair; some old houses are worth very little.

2983. What is the state of the repair of the inn at Selkirk?—It is in fair repair; there have been a good many repairs and alterations upon it since.

2984. Since this tenant went in?—He was in it, and has continued in it since.

2985. Is it a good substantial building?—Yes.

2986. What number of years' purchase does property bring in Selkirk?—There is such a variety of house property, I cannot give an idea of that.

2987. How many years' purchase should you say that the inn was worth?—I really cannot give an opinion upon that.

2988. What is the date of the disposition you drew up?—The 28th of January 1833.

2989. Two of the proprietors are John Scott and William Scott; are those political agents of Mr. Pringle, of Whitebank?—No, they are his private agents.

2990. Is Mr. Finlay his agent, or was he so at the time of the purchase?—I believe he was in the firm at that time with the Messrs. Scott.

2991. Is Mr. Scott Moncrieff brother-in-law to Mr. Pringle?—Yes.

2992. Is Mr. Potts a political agent for the tory party in Roxburghshire?—Yes.

2993. Was Mr. Adam Urquhart counsel for the party in the Registration Court in Selkirkshire?—Yes.

2994. Had any of those gentlemen any connexion with the county beyond that which they procured by this inn?—No, except through the connexion of Mr. Scott Moncrieff, through his relationship to Mr. Pringle, of Whitebank, no connexion in property that I am aware of.

2995. When did you first think of the purchase of this inn at Selkirk?—I think it was after hearing what Mr. Wilson said.

2996. When do you think that you heard that?—About the first week in January.

2997. How soon after you had that information from Dr. Anderson did you give it to Mr. Horne?—I should think soon.

2998. How soon?—A day or two days following.

2999. Was Mr. Horne in the county at the time?—No, I do not think he was.

3000. Where was he when you gave it him?—He would be in Edinburgh.

3001. Did Mr. Horne come down to the county of Selkirk about that time?—Yes, he did.

3002. Did he come down in consequence of your communication?—I cannot say; he came down, I think, about the 20th of January.

3003. Not before?—I think not.

3004. What was the purpose of his coming down?—No doubt to inquire into the political matters of the county.

3005. In what way to inquire into the political matters of the county?—How they stood, and the result of the last election.

3006. Could not he know the result of the election without coming to you to Selkirk?—He could, if I had written him upon the subject.

3007. The election was just over?—The election was on the 18th or 19th of December previous.

3008. He came immediately after that election to ask how you stood in the county?—Yes.

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3009. That was his object in coming?—Yes, apparently to me.

3010. Would not the state of the poll show him that?—It would show him the numbers.

3011. What did he want to know besides the numbers?—That is just another question whether I am to mention all I know professionally; I have no hesitation in doing so if I am desired.

3012. You were at that time political agent for the party?—Yes.

3013. And Mr. Horne came to the county upon matters connected with the political concerns of the county?—I understood it so.

3014. The Committee do not wish to know any thing not connected with the constituency, but the particular object of his coming down at that time?—Just to inquire the particulars of the result of the last election.

3015. Did he come there with a view to inquire into the result of the last election, or with a view to providing for another election?—I should say for both.

3016. Are you certain he came down for both?—I should say so.

3017. What could he desire to know then respecting the last election, generally speaking, when it had just been decided?—The nature of the majority given.

3018. Do you conceive that was his object; an object that would have brought him to the county of Selkirk at that time, if he had had no other?—It might be so.

3019. Did he or not come down at that period to provide for another election?—Both with a view to the last and the next election.

3020. Mr. *Ferguson.*] Might it be with a view to petition against the return?—It might be he put questions to me, alluding to votes on both sides.

3021. *Chairman.*] Mr. Horne is a writer to the signet in Edinburgh, a person in considerable business?—Yes.

3022. Was it likely he would come to you, or you go to him?—I should think he would get the information best upon the spot.

3023. What information could he want but that which you could have given him from your books?—As to the qualification of the different voters who voted, he would have a better opportunity of seeing that upon the spot.

3024. Was the subject of making votes at that time entered upon between you and Mr. Horne?—Yes.

3025. Was the putting votes on the registration for another election one of the objects of his coming down?—I should think it would be, because I had communicated previously what I had heard was going on by the other party.

3026. Had you done that by word of mouth, or by letter?—I cannot recollect just now.

3027. Mr. *Maule.*] Had you any previous communication by word of mouth till he came down?—I think not.

3028. *Chairman.*] Had you seen Mr. Horne before he came down to the county of Selkirk?—No.

3029. You had not been to Edinburgh?—No.

3030. Did you write and inform him what Dr. Anderson had told you?—I think I would do so either to him or to Mr. Pringle, of Whitebank.

3031. Did you not say that you told Mr. Horne that?—I am sure I told it in one way or another.

3032. Previous to his coming to Selkirkshire?—No, I am not sure of that.

3033. Are you sure that when he came down he had heard what Dr. Anderson had said of Wilson?—I am sure he would, provided Mr. Pringle, of Whitebank, communicated it to him.

3034. Have you any recollection whether Mr. Horne knew it when he came?—I am not positive whether he did or not.

3035. He came down to the county of Selkirk, for any thing you know to the contrary, without being aware of what had been said?—If Mr. Pringle, of Whitebank, had communicated it to him he would know it.

3036. But you are not sure whether Mr. Pringle had informed him?—No, but my impression is that he was aware of it.

3037. Did you not state that for any thing you knew to the contrary he was ignorant of what Mr. Wilson had said to Dr. Anderson?—No; I had communicated it to Mr. Pringle, of Whitebank, and my impression is that he knew it from him.

3038. Then you and Mr. Horne set about looking for properties for sale?—We talked over that.

3039. Did you take steps for procuring any?—Yes.

3040. You began a regular system of discovering properties to be bought for political purposes?—There were two properties purchased for that purpose.

3041. You entered into a resolution that you would carry on that system?—That we would purchase those properties.

3042. Do you know the inn at Torsonce?—Yes.

3043. Do you know who are the proprietors of that inn?—I have heard that it is held by proprietors, but I cannot say by whom, but more than one proprietor.

3044. Do you know any thing about it?—No.

3045. You do not know who the proprietors are?—No.

3046. Nor how they voted?—No.

3047. You cannot state whether it is a case like that in Selkirk?—No, I only know that it is held by more than one proprietor.

3048. Mr. *W. Campbell.*] Was the inn at Selkirk sold publicly or privately?—Privately.

3049. When did you first hear it was for sale?—It had been advertised some time before for sale.

3050. Did you apply to Mr. Wilson?—I think we did; yes we did.

3051. Who was it that applied to Mr. Wilson?—I applied to him to know whether he would sell, and to know his terms.

3052. At what time did you apply to him?—From the 15th to the 18th of January.

3053. Mr. Horne came to the county about the 20th?—Yes.

3054. It was between the 15th and the 18th of January you had your communication with Mr. Wilson?—Yes.

3055. Who gave you directions to speak to Mr. Wilson on the subject?—I think Mr. Pringle, of Whitebank.

3056. Mr. *Divett.*] In consequence of the arrangements you came to with Mr. Horne, were any measures taken to purchase other properties besides those two you have already mentioned?—None, except those that were put upon the roll in 1833.

3057. Will you state whether there were others or not?—I should require to look over the list.

[*The Witness referred to the same.*]

3058. There is a case of Mr. Simson, is that in the same year?—Yes.

3059. Were there any other cases of joint proprietors?—No, I think not.

3060. Sir *William Rae.*] The price of this inn was 1,995*l.*?—Yes.

3061. The burdens upon it amounted to 1,830*l.*?—One thousand six hundred and eighty pounds of heritable, and then the seller's agent had a claim for 150*l.*

3062. It is not probable those parties would have lent so large a sum, if the property had been less valuable?—No.

3063. You considered it as a fair price?—I did.

3064. The property was afterwards considerably improved?—Yes.

3065. Do you know the amount of the sums afterwards laid out in improvements?—I should say from 150*l.* to 300*l.*

3066. At the time Mr. Horne came down, was the state of the votes at the preceding election considered, with the view of determining whether a petition to Parliament against the return should not be presented?—Yes, that was the case.

3067. Mr. Horne at that time became political agent?—Yes.

3068. Was that just at the time that Mr. Horne became political agent, or how long before?—I think it was just about that time that I had the first communication with Mr. Horne.

3069. Did he come down to understand the state of the county, having been appointed political agent?—Yes; he gave me to understand that was one of the objects of his inquiries.

3070. *Chairman.*] Did Mr. Horne take any part during the time of election or in canvassing the county?—Yes.

3071. Much?—Yes.

3072. Is he generally there during the contests?—He goes out and in.

3073. Had he any connexion with the county before hwas appointed agent?—No.

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3074. Had he much acquaintance with the county or the electors before that time?—Oh yes.

3075. How?—Through his brother-in-law, Mr. Ogilvie, who resided in Selkirkshire; he has visited his brother-in-law at Ettrick Bank while he used to be there.

3076. Except that, had he any knowledge or acquaintance with the gentlemen of the county?—He visited many proprietors in the county.

3077. Was the consultation with respect to the petition one that might have taken place best in Edinburgh or in Selkirk?—One of the objects of his visit, he told me, was to ascertain whether there should be a petition.

3078. Would that have been best ascertained in Edinburgh or Selkirk?—The legal advice upon it might have been best obtained in Edinburgh.

3079. If you had a legal consultation upon that subject, would it be likely that would be had in Edinburgh or in Selkirk?—I should say it would be commenced in Selkirk, and then perhaps a legal opinion taken in Edinburgh.

3080. Sir *William Rae.*] Many questions might arise upon the value of the property?—Yes, there might.

3081. And that might be better ascertained in Selkirk than in Edinburgh?—Yes.

3082. *Chairman.*] Do you state positively that Mr. Horne's object in coming down was not to obtain property?— Both objects.

3083. Do you state that that was not his principal object?—I should say it was not.

3084. How many joint proprietors were enrolled in 1832?—I cannot say till I look over the list.

3085. Were James and Alexander Cameron enrolled as joint proprietors by you?—Yes.

3086. They were father and son?—Yes.

3087. Can you tell how they acquired their right; had they acquired it by purchase in 1808 made by them jointly?—I should say many years previous to 1832; I cannot mention the year.

3088. Were John Haldane and his brother registered as joint owners?—Yes.

3089. How did they acquire their right?—By succession to their father, I think.

3090. Those were all the cases of joint proprietorship that there were, were they not?—There were very few; but I should like to look over the list before I say that.

3091. A case of joint proprietorship was very uncommon in that county, was it not?—There were very few at that time.

3092. Did it sometimes occur by succession?—Yes.

3093. In your own experience did it ever occur by purchase previously?—The case of the inn was one; that I learnt from seeing the titles.

3094. Had you ever in your experience known a case of joint purchase by persons not connected with one another?—I do not recollect any just now.

3095. In the case of the inn, you saw the deed a long while after it was executed?—Yes.

3096. Whereabouts was the date of that deed?—Somewhere about 20 years ago.

3097. Since you yourself became at all practised in law matters, did you ever know an instance of joint purchase by individuals not connected with one another?—No, I did not.

3098. Did you ever know a case of joint purchase by individuals not connected together in any way?—No, I am speaking of my own experience as a professional man.

3099. Do you know that that is unusual?—I am not aware of any.

3100. Were any cases of that kind registered in 1832 by the liberal party?—I should say not, but I have not looked over the roll.

3101. Are you aware whether any case of joint proprietorship was enrolled by the liberal party in 1833?—I am not aware of any except the Haldanes.

3102. When were they enrolled?—In 1832.

3103. Are you aware of any joint purchases enrolled by the liberal party in 1833?—There was a case of the two Hoggs, Walter Hogg and Walter Hogg, junior; one of them died before the enrolment took place; Walter Hogg, junior, died, I think, before the enrolment took place; he claimed, at all events, as joint proprietor.

3104. How had he acquired his title?—The father had the property, and he gave his son an interest in it.

3105. Who enrolled him?—Mr. Haldane.

3106. When did he give his son an interest in it?—He must have done it previous to the 31st of January 1833.

3107. Do you know how long it was previous to that?—It must have been subsequent to the enrolment of 1832.

3108. Was Hogg, the father, enrolled as sole proprietor in the year 1832?—Yes.

3109. Did he give his son an interest in the property?—Old Hogg was enrolled in 1832, and he was struck out afterwards, as appears in my list here, and that was in consequence of his giving his son an interest in the property, but his son died.

3110. What became of Hogg?—I cannot see at this moment in the list I have here.

3111. Can you state any instance of joint proprietors being enrolled in 1833 by the liberal party?—That is the only case that occurred, and I cannot see that he was enrolled; there was some claim made by old Hogg, but I cannot see whether he was enrolled.

3112. These joint proprietorships upon the inn and upon the lands of Batts were made for political purposes, were not they?—I should say to qualify themselves as voters.

3113. Do you know James Simpson, of Fauldshope?—Yes.

3114. Did you enrol him in 1833 as a life-renter?—Yes.

3115. Was that vote made for a political purpose?—It was given to him by his brother, William Simpson; I should say it was for the purpose of a vote.

3116. Viscount *Stormont.*] Had you any thing to do with that?—I prepared the deed.

3117. *Lord Advocate.*] Was there any money paid?—No; it was in consideration of love and affection, there was no money paid.

3118. *Chairman.*] By whose direction did you prepare the deed?—William Simpson's.

3119. Did you suggest to him the granting of life-rents?—I cannot say whether I suggested the mode or not; but he said he could qualify his brother; that he could give him a qualification in the county of Selkirk.

3120. Did you suggest that to him?—It is very possible I might.

3121. Do you think you did?—I should think I did.

3122. You made out the deed?—Yes.

3123. Who paid you for making out that deed?—I charged it against William Simpson.

3124. The granter of the life-rent?—Yes.

3125. Has he paid you?—It is not paid yet; I have rendered him an account some time ago.

3126. Did the brother enter into the possession of the life-rent?—He drew the rents of it.

3127. Who occupies the premises?—It is a house in the street of Selkirk, let to different individuals.

3128. Who draws the rents?—They are drawn by an uncle of his, Mr. Thompson, a merchant in Selkirk.

3129. Have you any thing to do with the drawing the rents?—No.

3130. Do you know to whom Mr. Thompson accounts for the rents?—I just know that he draws the rents; William Simpson has other property in the town of Selkirk, and he draws those rents also.

3131. He draws the rents for all his property?—No; for all his house property.

3132. Has James Simpson any other property?—No heritable property.

3133. Does Thompson account for the rents to the land-owner, James Simpson?—I have no idea how he accounts for them.

3134. Were you present at the arrangement between the buyers about the life-rent?—I was present when William Simpson said he would qualify his brother.

3135. Was there any thing said about his giving him the value of the life-rent?—He just said he would qualify his brother.

3136. Did he mean that he would make him a present of those houses, or get him enrolled upon them?—I understood he would make him a present of them.

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3137. Do you know whether James Simpson receives the rents of those houses?—I should understand so, when William said he would give them to him.

3138. You have said the object was solely for political purposes?—I apprehend so.

3139. Was any tack given back by James Simpson?—No.

3140. It was quite easy for William Simpson to put his brother on the roll without giving him an interest in the property, was it not?—These matters were so much sifted in the Registration Courts and the Appeal Courts, that it is a difficult matter.

3141. It is a difficult matter to give a man a life-rent, without a share of the profits?—It cannot be called giving it him, unless he has the rents.

3142. It is a difficult thing to give him a life-rent, unless he has a share of the profits?—It is no life-rent at all, unless he has a share of the profit.

3143. Do you believe there are any instances of disposition, where the individual does not get a share of the profits?—There is no instance within my experience.

3144. You think it difficult to accomplish this?—From what I saw going on in the Registration Court and the Appeal Court, and what I heard afterwards was going on, I think there was a great deal of sifting.

3145. Do you think the object is defeated when it is attempted?—It must depend upon the sifting and examination of the matter.

3146. The question is gone into in the Appeal Courts, whether the person acquires a real interest in property?—There has been a reference to oath by the court in those matters.

3147. Is there, in fact, any such reference?—Yes.

3148. The deeds do not prove that the individual has any interest in the property?—There is first the title in the property.

3149. Is William Simpson a married man?—No.

3150. Was it a usual way of conveying a life-rent which was adopted by William Simpson?—No, not very usual.

3151. Was it very unusual?—There are few people so good as to give it by way of gift.

3152. Was it a usual thing in the practice of the Scotch law for a person to give a life-rent, reserving the fee to himself?—There are cases of that kind.

3153. Frequent?—I cannot say frequent, but there are such things.

3154. Was any case of that kind enrolled in fact in the year 1832?—I do not recollect any.

3155. Can you state whether there were or were not?—Except in right of their wives as life-rents, and schoolmasters and ministers; there were those.

3156. Were any of those cases of persons where the life-rent was conveyed and the fee retained by the conveyor?—Unless in the case of marriage settlement, and such cases, the husband, in right of his wife, and so on; but I do not recollect any case of an out and out conveyance, where a person conveyed the life-rent to the individual and retained the fee to himself.

3157. Sir *William Rae.*] You say this was done for political purposes in Simpson's case?—Yes.

3158. *Chairman.*] In every one of the instances of this kind, before any life-renter obtained a life-rent, did the person that made the conveyance reserve the fee, or was this a new kind of life-rent then created for the first time?—To my knowledge there was no one came through my hands.

3159. You never knew an instance of a life-rent of this kind before?—I know there are instances of life-renters and fiars living at the same time; the old freeholders were many of them enrolled in that way.

3160. Except the old freeholders, did you ever know a case of a person conveying a life-rent and reserving the fee?—Not unless for family arrangements.

3161. Did you ever know an instance for family arrangement?—Yes, where the life-rent is given to the widow, reserving the fee to the son.

3162. In case of a marriage contract, the property is taken by the husband and wife in joint life-rent and the fee conveyed to the children; is that the case you refer to?—Yes.

3163. In that case the person reserves the life-rent and conveys the fee?—Yes.

3164. Can you state a case where a person reserves the fee and conveys the life-rent?—None have come under my notice.

3165. Have you ever known such a case in your life?—Not to my knowledge.

3166. Is this the first that ever came under your knowledge?—Yes.

3167. Have

3167. Have you ever heard instances of it before?—I have heard that such rights existed.

3168. How long have you been connected with the legal profession?—About 10 to 12 years.

3169. Does not your experience tell you that life-rent conveyed, and the fee reserved, was unknown till the year 1832, except in the case of old freehold voters?—And the cases mentioned of family arrangements, I know of none.

3170. Will you take upon yourself to say that they had not before existed?—No, I would not take upon me to say that.

3171. Were there any of that kind created by the liberal party in 1833?—None.

3172. Sir *William Rae.*] By the Reform Act a life-rent and property of this description is made a qualification, is it not?—Yes.

3173. May it not be presumed from that, that such a thing had existed before?—The presumption is, that it had.

3174. Was any objection taken to this vote of Mr. Simpson at the Registration Court?—There was an objection raised, but I do not think it was persisted in.

3175. *Chairman.*] Were there any joint tenancies created in 1833 for political purposes?—There was the case of Robert Brydon and James Paterson; they claimed in 1832, and were rejected; they claimed in 1833, and were enrolled.

3176. Was that joint tenancy for political purposes?—In 1832, they proved that they had an interest in the farms, but they wanted a title, and that title was given them, which enabled them to be enrolled in 1833.

3177. They were assumed by the uncle, were they not?—Yes.

3178. Into the farm of Redford Green?—Yes.

3179. Had they no title in 1832?—No.

3180. What did they claim as?—As occupants of the farm.

3181. Did they produce a title afterwards?—Yes.

3182. Had old Brydon a title in 1832?—Yes.

3183. What was the title they produced in 1833?—As joint tenants with their uncle.

3184. Have you stated that that was a vote created for political purposes?—No, I have not.

3185. You cannot state whether it was or not?—I should think not, from the circumstance of their claiming in 1832, and then their producing their title in 1833.

3186. What was the title they produced in 1833?—A tack to themselves and their uncle.

3187. From whom?—From Mr. Rutherford's commissioner in Edinburgh, I think.

3188. Who was he?—Mr. Andrew Dunn, writer to the signet.

3189. Had old Brydon a tack before that?—Yes.

3190. Was that dispensed with?—I do not know whether it was produced or not.

3191. Was the old tack dispensed with and a new one granted to the three individuals?—Yes.

3192. In the old tack their names were not mentioned, but in the new one they were?—Yes.

3193. They were admitted upon this tack in 1833?—Yes.

3194. Was that tack given them for a political purpose or not?—That would be one of their objects, to produce this to give them a title.

3195. In 1832 Mr. Brydon was sole tenant?—In the lease he was, but those individuals claimed in 1832.

3196. Sir *Hugh Campbell.*] They showed an interest in the farm?—Yes.

3197. *Chairman.*] What interest did they show?—That their fathers previously had had a share in the stock.

3198. When had they previously a share in the stock?—Some years before.

3199. Sir *Hugh Campbell.*] Had they succeeded to their fathers?—Yes.

3200. *Chairman.*] On his death what occurred?—His sons succeeded to his interest.

3201. Had the father a joint interest in the farm?—No, he had not.

3202. Do you know Mr. Brydon?—Yes.

3203. You know he has several farms?—Yes.

3204. You know he has taken nephews in on each of those farms?—Yes.

3205. Should you say he has done that for political purposes?—I should say so.

3206. Do you know of any joint tenancies created by the liberal party that year?—None.

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3207. Viscount *Stormont.*] Those you have referred to were put on by Mr. Andrew Dunn?—The tack was granted by him.

3208. What party does he belong to; does he belong to the conservative party?—No, to the other party.

3209. If those were put on for a political purpose, they were put on by the whig party?—Qualified by the whig party.

3210. *Chairman.*] Was Mr. Dunn the proprietor of this farm on which those persons were enrolled?—No, commissioner for the proprietor.

3211. Who is the proprietor?—That property is sold now; it was Mr. Henry Rutherford's.

3212. Was he a political partisan at all?—I had no opportunity of knowing; he was abroad at the time of the last election.

3213. Was he active as a political partisan?—No.

3214. Mr. Dunn was acting in this for Mr. Rutherford's interest?—Yes.

3215. If two persons came and offered to be joint tenants with Mr. Brydon, and he thought it for his client's interest, was he or not bound to act for that interest without regard to his own political sentiments?—Certainly, if he thought so.

3216. If he was acting in that manner for his client's interest, who was not a partisan, how can you state that those votes were put on by the whig party?—That they were qualified, I said; Mr. Andrew Dunn is a whig.

3217. They were qualified by a person who was acting in his private capacity as agent for Mr. Rutherford?—Yes, they were qualified by him, and he was a whig.

3218. Was he acting in a political character when he qualified those votes?—No, I should say not.

3219. If those persons offered to become joint tenants with their uncle, and Mr. Dunn, acting for Mr. Rutherford, considered it for his interest to have the additional security, was he not bound to accept them?—If he thought it for his client's interest.

3220. He would have done so?—From any thing I know of him he would have done so; those two nephews were anxious to be qualified as voters, and representing that they had an interest in this farm, they got a title from Mr. Dunn.

3221. Those two persons voted on the opposite side from Mr. Dunn in politics?—Mr. Dunn did not vote in the county of Selkirk.

3222. They voted in the interest opposite to that he espoused?—Yes.

3223. Can you say that they were put on for political purposes by him?—No.

3224. Then if the transaction was for the interest of his client, was not he bound to allow him to be put on?—I should think so.

3225. Viscount *Stormont.*] Was he legally bound?—No, but if he studied his client's interest, his own feelings should teach him to do that; no person could compel him, I should apprehend.

3226. *Chairman.*] He was bound by his duty, as an honest agent for his client, though what he did might militate against his political views?—Yes.

3227. Viscount *Stormont.*] Mr. Dunn is a very keen partisan, is he not?—I have understood he is a man who interests himself in politics.

3228. Have you never known persons put on votes on the supposition that they will vote on one side of the question, and that in point of fact they voted on the other; did you never know persons put on on the conservative side who voted on the whig side, or put on on the whig side who voted on the conservative side?—I should require to look over the lists before I could answer that.

3229. *Chairman.*] Do you conceive those votes were put on by Mr. Brydon, or Mr. Dunn?—I conceive his nephews having an interest in those farms, went to Mr. Dunn, and said, we wish to be introduced into the tack.

3230. They wanted that done for a political purpose?—That was one of the objects.

3231. Who do you say was the person that put them on, Mr. Brydon or Mr. Dunn?—They applied to Mr. Dunn.

3232. Do you know with whom this originated, with Mr. Dunn or Mr. Brydon?—I should say with Mr. Brydon.

3233. Sir *Thomas Fremantle.*] Do you know the fact?—No, I do not.

3234. *Lord Advocate.*] Do you believe that Mr. Dunn acted with any political views in the transaction, either one way or the other?—I cannot say that he did.

3235. Do you think he did?—Nothing appears from which I can say that.

Mercurii, 1° *die Martii*, 1837.

MEMBERS PRESENT.

Lord Advocate.	Sir Hugh Campbell.
Mr. W. Campbell.	Sir William Rae.
Mr. Bingham Baring.	Mr. E. Buller.
Mr. Warburton.	Mr. Dunlop.
Mr. Fox Maule.	Mr. G. Ferguson.
Mr. Divett.	

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

[*The Petition of the Provost, Magistrates and Town Council of the Royal Burgh of Stirling, referred to this Committee, was read.*]

Mr. *Peter Rodger*, again called in; and further Examined.

3236. *Chairman.*] YOU stated yesterday that there were a number of votes begun to be created by the tory party in Selkirkshire after a conversation that had taken place between Mr. Wilson and Dr. Anderson?—Yes.

3237. That it was in consequence of that conversation votes for political purposes were created?—Yes.

3238. And those votes were created by means of joint proprietorship, life-rents and joint-tenancy qualifications?—Yes.

3239. Did you not state that but for that information given you upon that occasion votes would not have been created for political purposes at the time?—The thing was agitated after that.

3240. No vote was created by the tory party till after that conversation?—No.

3241. Do you remember a joint tenant enrolled in 1833, William Grieve, of Henwoodie?—Yes.

3242. He was enrolled upon the lands of Henwoodie?—Yes.

3243. He was assumed into the lease by his father?—Yes, as sub-tenant.

3244. A part of the farm was assigned to him by his father?—Yes, as sub-tenant.

3245. Was not that by permission given by the Duke of Buccleuch on the back of the lease?—Yes.

3246. Was that a tenancy created for a political purpose?—Yes, it was.

3247. He was inrolled in August 1833?—Yes.

3248. Do you know that by the Scotch Reform Bill a tenant must have his qualification twelve months before he can be enrolled?—Yes.

3249. Then William Grieve, who was enrolled in 1833, must have been in possession of that qualification in 1832?—Yes.

3250. Then how could William Grieve acquire a qualification in August 1832, in consequence of a conversation between Mr. Wilson and Dr. Anderson in January 1833?—William Grieve claimed in 1832, as sub-tenant; it was proved that he had had a sub-tenancy from his father, but an objection was taken that his father's lease excluded sub-tenants; therefore it was not a good title.

3251. Have you not stated that was a qualification given him for a political purpose, on which he was enrolled in 1832?—The minute by the Duke of Buccleuch, dispensing with sub-tenancy was given, and in consequence of that he was enrolled in 1833.

3252. How could he have his qualification given him in 1832, in consequence of this conversation, which took place in January 1833?—It was not in consequence of political purposes that he claimed in 1832; he claimed, but was rejected, on the ground I have stated; it was proved his father had sub-set this

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part of the farm to him, but we were met by the objection that his father's lease precluded sub-tenants.

3253. Did you not state that he was afterwards provided with a dispensation for a political purpose?—It was a good qualification, made so by the Duke's dispensing with this clause.

3254. That dispensation was given him for a political purpose?—I would say so.

3255. Could that dispensation be given him in consequence of the conversation between Wilson and Dr. Anderson?—No; I would say that having claimed in 1832, that being the only obstacle in the way, he would have been enrolled at all events in 1833.

3256. Mr. *Warburton.*] Was not the application made to the Registration Court by this person to be inrolled previous to this conversation?—He applied in 1832 to the Registration Court.

3257. His vote was rejected, because he had not then a dispensation?—Yes.

3258. That defect was afterwards supplied?—Yes.

3259. And this conversation, which you say gave rise to the endeavour of the tory party to put on votes, took place in the interval between the first application of Grieve to be admitted upon the registration list, and the subsequent granting by the Duke of Buccleuch of the dispensation?—The dispensation by the Duke of Buccleuch took place subsequent to the conversation.

3260. Sir *William Rae.*] When did that conversation occur?—In January 1833.

3261. *Chairman.*] You say the dispensation took place after that conversation?—Yes.

3262. Must not Grieve have been in possession of that farm under the lease for twelve months before he could be enrolled?—It was proved that he had been in possession, but we were met by that clause in his father's lease.

3263. Was the dispensation after January 1833?—Yes.

3264. Mr. *Warburton.*] Did not his title to the land commence from the date of the dispensation?—No.

3265. Mr. *Fox Maule.*] Do you mean to say that Grieve, in 1832, was rejected because there was no dispensation from the Duke of Buccleuch for his father to sub-let?—Yes.

3266. Do you mean to say also that when the dispensation from the Duke of Buccleuch was given in the January following, he could be enrolled at the next Registration Court, that dispensation having existed only six months?—I have not said the Duke of Buccleuch gave his dispensation in January 1833.

3267. What do you mean by that answer you have given, that the dispensation was given after January 1833; what dispensation did you allude to?—Of the clause excluding sub-tenants.

3268. By whom was that dispensation given?—By the Duke of Buccleuch.

3269. *Chairman.*] When do you say the dispensation was given?—I should say some time in the spring of 1833.

3270. Mr. *Fox Maule.*] Do you mean to say that when the dispensation of the Duke of Buccleuch was given, subsequent to the January 1833, he could be enrolled at the next Registration Court, that dispensation having existed only six months?—Yes; he was enrolled.

3271. Sir *William Rae.*] Does the privilege of excluding assignees or not solely apply to the landlord or granter of the original tack?—Yes.

3272. Suppose in a lease of that description the tenant grants a good tack to another individual, would that tack be unchallengeable at the instance of the tenant who granted it, supposing the landlord to know it and not to object to it?—The sub-tenant might make it good against the principal tenant.

3273. Therefore the privilege is one applicable to the landlord or grantor of the document?—Yes.

3274. Mr. *Fox Maule.*] You say that without a dispensation the sheriff pronounced that Grieve was not entitled to the franchise, and was not a *bonâ fide* tenant of that farm, such as the Reform Bill requires to be constituted an elector?—We were met by the objection that he could not sub-let, and the sheriff sustained that objection.

3275. Did not the sheriff in holding that objection, establish this point, that it was necessary he should be a *bonâ fide* tenant, such as the Reform Bill required, for twelve months?—No.

3276. Do you not believe that was necessary?—It was not agitated in this case, the *bona fides*.

3277. At the subsequent court at which this man was put upon the roll, was not there any proof, showing that the dispensation had existed for twelve months, and that he had been tenant under his father, by the Duke of Buccleuch's permission, for twelve months?—It was proved he had been a sub-tenant for more than twelve months previous, but not that the dispensation had been granted more than twelve months.

3278. If he had been a sub-tenant, but if the dispensation was given only the day before the Registration Court sat, that was held sufficient to constitute him an elector?—Providing he had been in possession twelve months previously.

3279. Sir *William Rae.*] The Duke of Buccleuch, after granting that dispensation, could not challenge the sub-tack?—No.

3280. Prior to the first registration, could this man have been a sub-tenant?—Yes, actually in possession.

3281. Sharing the profits of the farm?—Yes, of the sub-set farm.

3282. And he continued to do the same down to the subsequent registration?—Yes.

3283. Mr. *Fox Maule.*] The dispensation was necessary, to make this man Grieve's vote legal?—To do away with the objection taken.

3284. Do you or not believe that that dispensation was given by the Duke of Buccleuch solely to put this man upon the roll?—Not in this case, for it was proved distinctly this man had possessed for many years previously a sub-tack.

3285. Do you or not believe that the dispensation was put upon the back of his father's lease, solely for the purpose of enabling Grieve to get upon the roll?—That was one of the purposes.

3286. Could not the same relation have continued to exist between Grieve and his father in time future, as had done before without the Duke of Buccleuch's putting this dispensation on the back of the father's lease?—So long as the Duke did not interfere with it.

3287. Sir *William Rae.*] The Duke could not be barred from challenging it till he had signed that dispensation?—No.

3288. Sir *Hugh Campbell.*] Are you aware of any advantage which the young man got from the dispensation, beyond being put upon the roll?—No, I am not aware of any advantage.

3289. Mr. *Fox Maule.*] The dispensation is on the back of the lease; in whose hands is the lease?—I should say, in the Duke of Buccleuch's agents'.

3290. Who are the Duke of Buccleuch's agents?—Gibson & Home.

3291. Sir *William Rae.*] You do not mean to say that both copies of the lease are in the hands of the Duke of Buccleuch's agents?—No.

3292. The dispensation would probably be on the back of that in the hands of the tenant?—I cannot say, indeed.

3293. *Chairman.*] Who prepared the deed assigning the part of the farm from the father to the son?—I do not know that there was any deed; there was no assignation necessary, if my recollection bears me right.

3294. Do you know that the Duke of Buccleuch that year dispensed with a great many other clauses of the same kind?—Yes, in 1833.

3295. Were a good many of the tenants to whom those dispensations were given registered in 1833?—In 1834.

3296. Were a good many of the tenants to whom those dispensations were given registered in 1833 as joint tenants?—Yes, they were upon the roll of 1832 as sole tenants, and they were enrolled as joint-tenants in 1833.

3297. Was James Stoddart, of Newburgh, one of those?—Yes.

3298. Was Thomas Gibson, of Shaws, one of them?—He was renewed on Shaws, the property of Mr. Johnston, of Alva.

3299. Was not he a tenant of the Duke of Buccleuch's?—Yes.

3300. Did he not get a dispensation?—For Fastheugh he did.

3301. Was Robert Ballantine one of those?—He was enrolled as sole tenant of Tinneys, but he got a dispensation for Altreve.

3302. Was not he enrolled in 1833 as joint tenant?—No.

3303. Was his son enrolled with him as joint tenant in 1834?—Yes.

3304. Did William Aitchison get that dispensation?—Yes, he was re-enrolled as a joint tenant in 1833.

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3305. Was Brydon, of Annoldshope, enrolled as a joint tenant that year?—No.

3306. Did he take a nephew as joint tenant in his farm of Annoldshope?—No, previous to 1832 they were joint tenants.

3307. Were the two Moffatts of Garwold enrolled along with their father?—In 1834.

3308. Was he enrolled in 1833?—Yes.

3309. Did those persons all obtain their dispensation in 1833?—Yes.

3310. When they took their sons in, did they give them deeds or any title to show that they took them in?—They gave them an assignation.

3311. Did you prepare any of those assignations?—Some of them.

3312. Did the parties pay you for preparing them?—No.

3313. To whom did you charge it?—I must have charged it in my general account of the expenses of the registration court for that year.

3314. Against whom did you charge it?—Mr. Horne.

3315. He paid you for those?—Yes, he did.

3316. Sir *William Rae.*] Can you state how many tenants of the Duke of Buccleuch were enrolled in the registration of 1832?—Twenty-eight.

3317. How many of those were joint tenants?—Seven.

3318. How many tenants of the Duke of Buccleuch, all together, were enrolled in the year 1834?—Thirty-seven.

3319. How many of those were joint tenants?—I cannot say just now without going over the names.

3320. The total number, including joint tenants, was 37?—Yes.

3321. Were any tenants added since the election of 1834 to the list?—I cannot say, for I attended no registration court after 1834.

3322. Can you state what is the value of the Duke of Buccleuch's estate in the county of Selkirk?—Somewhere about 10,000 *l.* a year, I have understood.

3323. Do you know the extent of his valued rent in the county of Selkirk?—No.

3324. You do not know whether it is equal to the extent of the whole county?—I cannot say.

3325. A great deal of the taxation is levied upon the valued rent?—It is regulated by that.

3326. Mr. *Fox Maule.*] How many tenants were enrolled upon the Duke of Buccleuch's property in 1833?—I can give that by looking over the list, but I cannot tell without that.

3327. How came you to be so certain of others and not of this?—I have a note of them before me.

3328. *Lord Advocate.*] Did not some of the Duke's tenants restrict themselves from being enrolled singly in 1833 to being enrolled as joint tenants in 1833?—Those I have mentioned were enrolled as sole tenants in 1832, and were enrolled as joint tenants afterwards.

3329. *Chairman.*] When those persons took in their sons as joint tenants, and the father was enrolled in 1833, and the sons were not enrolled till 1834, was the reason of that that the son had not been 12 months in possession of his qualification?—The reason was, the principal tenant had changed his character; that he was now a joint tenant.

3330. Why was not the joint tenant also enrolled?—Because we held that the joint tenancy precluded the sole tenants.

3331. Moffatt takes with his two sons in 1834 at the registration of 1833 they were all joint tenants, but only one was in a condition to claim at that time?—Yes.

3332. Is the reason of that that he had not procured his qualification 12 months before?—No, because being joint tenants, the larger included the smaller qualification; they were mostly led farms.

3333. *Lord Advocate.*] Was the reason why the son was not enrolled in 1833, that there was a joint tenancy then made, and that it required a year before they could be enrolled?—Yes.

3334. How many were enrolled as joint tenants in 1833 who had previously been enrolled as sole tenants in 1832?—

3335. Sir *William Rae.*] Are there frequent changes of tenants upon the Buccleuch estate?—Very seldom.

3336. Can you mention any change in the Buccleuch estate which has taken place in your lifetime?—None to my knowledge, where the father had a son to succeed him and carry on the farm.

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3337. Mr. *B. Baring.*] It is a subject of anxiety for every one to get upon the roll of the Duke of Buccleuch's estate?—Yes.

3338. Was it the practice before the Reform Bill, for fathers to take their sons as sub-tenants?—No.

3339. Sir *William Rae.*] Will you look at that list and state whether it is correct? [*A list being shown to the Witness.*]—It is correct; to the registration of 1834, that I cannot speak to.

[*The list was read, as follows:*]

List of Tenants Registered on the Buccleuch Estates in 832.

1. James Brydon, Moodlaw	-- Joint tenants of Annoldshope and Gair. Had been joint tenants prior to 1831, when current lease commenced.
2. James Brydon, Kennelhead	
3. William Davidson, banker, Hawick	Tenant of Ropelawshire.
4. James Grieve, Brancholmpark	Easter Buccleuch.
5. James Burnet, Beelendean	-- Joint tenants of Beelendean. Had been joint tenants prior to 1831.
6. Robert Burnet, ditto	
7. John Turnbull	Western Buccleuch.
8. William Moffat, Craik	Craik.
9. Alexander Cunningham	Carterhaugh.
10. John Park	Fauldshields.
11. Robert Simpson	Fauldshope.
12. William Aitchison	Shootinglees.
13. Robert Ballantyne Tennis	-- Tennis, &c. also transferred to the register as an old freeholder.
14. George Ballantyne	Whitehope.
15. John Clapperton	Peel.
16. Elliot Grieve	Outer Huntly.
17. James Oliver	Easter Deloraine.
18. Walter Scott	Catslachburn.
19. Walter Scott	Mountbenger.
20. Francis Scott	Edinghope.
21. John Scott	Wester Deloraine.
22. Gideon Scott	Singlee.
23. Robert Scott	Berrybush.
24. James Stodhart	Newburgh.
25. Gideon Scott	Kirkhope.
26. Adam Scott	-- Joint tenants of Gilmanscleugh, and had been so prior to 1831.
27. James Scott	
28. Gideon Scott, Ladhope	Ladhope.
29. Thomas Gibson	Fastheugh.

Total 29, including *one* old freeholder otherwise qualified.

List of Tenants Registered on the Buccleuch Estates in 1834, prior to be Election in 1835.

1. James Brydon, Annoldshope	-- Old joint tenants of Annoldshope, registered in 1832.
2. James Brydon, Kennelhead	
3. William Davidson, Hawick	Ropelawshire.
4. James Grieve, Branxholm Park	Easter Buccleuch.
5. John Turnbull, Burnpot	Western Buccleuch.
6. James Grieve	Ditto - ditto.
7. Robert Burnet	-- Bellendean was registered in 1832, as joint tenant with his father, who died in 1833.
8. William Moffat	-- Joint tenants of Craik. Father and two sons. Sons assumed into the lease in 1833, and registered 1834.
9. John Moffat	
10. James Moffat	
11. William Grieve	-- Henwoodie. Had been sub-tenant, June 1824 or 1825, but rejected in 1832.
12. John Park	Foulshiels.
13. Robert Simpson	-- Joint tenants of Fouldshope, from Whitsunday 1831.
14. William Simpson	
15. Robert Gibson	Fastheugh.
16. George Ballantyne	Whitehope.
17. John Clapperton	Peel.
18. Elliot Grieve	Outer Huntly.
19. James Oliver	Easter Deloraine.
20. Walter Scott	Catslachburn.

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21.	Francis Scott	Eldenshope.
22.	John Scott	Western Deloraine.
23.	Gideon Scott	Singlee.
24.	Robert Scott	Berrybush.
25.	James Stoddart	Joint tenants of Newburgh; son assumed in 1833.
26.	James Stoddart, jun., ditto	
27.	Gideon Scott	Kirkhope.
28.	Adam Scott	Old joint tenants of Gilmanscleuch.
29.	James Scott	
30.	Gideon Scott, Ladhope	Ladhope.
31.	William Aitchison, sen.	Joint tenants of Mountbenger; father and two sons; sons assumed into the written lease in 1833, and registered in 1834.
32.	William Aitchison	
33.	George Aitchison	
34.	Thomas Ballantyne	Eltrieve, assumed by his father into lease of this farm in 1833, then second son, and intended by father as a provision for him; elder brother and father dead, and now heir in the leases of all the farms held by his father.
35.	Alexander Cunningham	Carterhaugh.
36.	William Beattie	Deephope, enrolled in 1835.
37.	Robert Ballantyne	Tinnis.

ABSTRACT of the TENANTS Registered on the BUCCLEUCH ESTATES, from 1832 to 1836 inclusive.

Number of tenants registered in 1832, as before		28
Number of tenants registered in 1834		37
Increase		9
Made up thus :—		
John Moffat, Craik	2	
James Moffat, ditto		
William Grieve, Henwoodie	1	
William Simpson, Fauldshope	1	
Robert Gibson, Fastheugh	1	
James Stoddart, jun., Newburgh	1	
William Aitchison, jun. } Mountbenger	2	
George Aitchison }		
Thomas Ballantyne, Eltrieve	1	
James Grieve, Western Buccleuch	1	
		10

Of whom two claimed in 1832, but were rejected.

ABSTRACT REGISTRATION, 1835.

Thomas Scott, Easter Mountbenger, in place of Walter Scott, dead.

Number registered in 1834, as before		37
Number registered in 1835—		
Thomas Scott	2	
William Beattie		
		39
Dead since 1834, viz.		
James Hogg	1	
William Aitchison	1	
Robert Ballantyne	1	
		3
Total in register in 1836, being eight more than in 1832		36

3340. On that list how many joint tenants does it appear were added subsequent to 1832?—Nine, including William Grieve, as sub-tenant, eight joint tenants and one sub-tenant, were enrolled in 1834.

3341. *Chairman.*] How many persons were enrolled as joint tenants in 1833, who had previously been sole tenants?—That does not appear upon this list.

3342. Sir

3342. Sir *William Rae.*] Does that list embrace all that had been put upon the roll in 1833?—Yes.

3343. *Chairman.*] Were there not eight persons enrolled as joint tenants in 1833, who had been enrolled as sole tenants in 1832?—This list does not show that; but if their names are mentioned, I can state whether they were so or not.

3344. Was there James Stoddart?—Yes.

3345. Thomas Gibson?—He was enrolled as sole tenant on Shaws.

3346. Was Robert Ballantyne another?—He was enrolled upon Tinney's, as sole tenant.

3347. Was William Aitchison one?—Yes.

3348. James Grieve?—He restricted his claim from Henwoodie; he excluded Henwoodie from it.

3349. Do you count that one?—There was a restriction in consequence of the dispensation.

3350. Was he a sole tenant?—Yes.

3351. Was Brydon one?—No.

3352. Was Moffatt one?—Yes.

3353. Was Thomas Grieve, of Skelfield, one?—There is a Thomas Grieve, of Skelfield, but I think that he is qualified in Galashiels.

3354. There were seven persons enrolled as joint tenants in 1833, who had been enrolled as sole tenants in 1832?—Yes.

3355. In 1834 there was Stoddart's son?—Yes.

3356. Gibson's son?—Yes.

3357. Ballantyne's son and Aitchison's two sons?—Yes.

3358. James Grieve's son?—As joint tenants.

3359. Brydon's son?—They were both enrolled as joint tentants in 1832.

3360. Was not Walter Brydon, of Annoldshope, registered in 1834?—That is not upon the Duke of Buccleuch's property.

3361. As to those three qualifications spoken of, life rent, joint tenants, and joint proprietors, was any voter enrolled on any one of those qualifications in 1833?—That of joint owners.

3362. Were there any life-renters made by the liberal party?—None.

3363. Was there any joint tenancy?—None.

3364. Did Thomas Kemp, of Bowhill, become a proprietor in that year?—Yes, in 1833.

3365. What was his qualification?—He purchased a house and garden in Selkirk.

3366. Was that purchased for a political purpose?—Yes.

3367. From whom did he purchase it?—From Messrs. Smith, of Darnick.

3368. What are they?—Builders in Darnick.

3369. What is Thomas Kemp?—At that time he was superintending the building at Bowhill; he was master of the works there.

3370. What were Messrs. Smith?—They were just general builders.

3371. Who occupied the building at Bowhill then?—I should think they did at that time; it would not be finished at that time.

3372. Did you act as agent in the transaction?—I think I drew out the disposition; but Curle & Erskine got the signature of the Smiths to it.

3373. Who conducted the transaction?—I may be considered as having purchased it for Kemp.

3374. What was the price of the subject?—Speaking from recollection, I should say, from my best recollection, somewhere about 200*l.*

3375. Did you conduct the purchase personally with Messrs. Smith?—With one of them I did.

3376. Was the price paid for it?—I drew the disposition, but it was completed by Curle & Erskine; I do not know how they settled it with Messrs. Smith.

3377. You acted for Kemp, and Curle & Erskine transacted for the sellers?—Yes, they settled with Messrs. Smith.

3378. Had the sellers, Messrs. Smith, an agent in the transaction?—I do not know; the reason it was sent to Curle & Erskine was, that the Smiths resided near Melrose, and they got their signatures to the disposition.

3379. You acted as agent for Kemp?—Yes.

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3380. Did Kemp pay the price?—I do not know whether he paid the price or not.

3381. You acted as agent for him?—In the first purchase of the property, before it was concluded by Curle & Erskine.

3382. Curle & Erskine acted for the Messrs. Smith?—I cannot say that they acted solely for them.

3383. You drew the deed for Kemp?—Yes.

3384. And you concluded the purchase for him?—Yes.

3385. Do you know whether Kemp paid the price for it?—I cannot say.

3386. Did you pay it?—No.

3387. Who paid you for drawing out the disposition?—It was charged against Mr. Kemp.

3388. Was the account rendered to him?—I draw the rents of the property still.

3389. Did you ever have a settlement with Mr. Kemp for the expenses of the deed?—No.

3390. Did you ever present him the account for the expenses of the deed?—No.

3391. You say you draw the rent?—Yes.

3392. You have paid the rent to Mr. Kemp?—No.

3393. Do you pay it to any one?—I draw the rents, and pay the public burdens and the repairs to the houses; I have paid it to no one just on Mr. Kemp's account.

3394. Had you any account with Mr. Kemp previous to this purchase?—No.

3395. Did you ever have any other transaction with him but that of this purchase?—None whatever.

3396. You have no idea whether he paid the price for that property?—No.

3397. But you have been receiving the rents of that property for him now for four years?—Yes.

3398. During which you have never accounted to him for it?—No.

3399. Is Mr. Kemp a person in good circumstances?—I should think he is in a fair way.

3400. How does it happen you have all this rent in your hands, and that you never have accounted for it to him?—He has not applied to me for it.

3401. Does he know that that money is in your hands?—Yes.

3402. Had you any order from him to draw the rents?—No written order, but he is aware that I do draw the rents, and attend to the letting of the property.

3403. Is it usual for you to have such a balance lying in your hands belonging to a person in Mr. Kemp's condition accruing for him?—No, it is not usual.

3404. Did such a thing ever happen before the passing of the Reform Bill?—I have had considerable balances of different properties in my hands, that I had collected previously.

3405. For men in Mr. Kemp's condition?—Generally, before the passing of the Reform Bill, no agent was employed for collecting such rents.

3406. Sir *William Rae.*] When was the purchase made?—In 1833.

3407. What is the annual rent?—Ten guineas; I think there has been a considerable sum expended in repairs.

3408. What is the sum now in your hands belonging to Mr. Kemp?—I should say that I have a charge against him for 15*l.* for advances, on the repair and public burdens, and the expenses of the disposition.

3409. What has been the rent?—He entered upon the property at Martinmas 1832; the rents are paid up to Martinmas last.

3410. That will be 40 guineas, minus about 15*l.*?—Yes.

3411. *Chairman.*] Do you believe that Kemp paid the purchase-money for that property?—Really I do not know.

3412. Mr. *Walter Campbell.*] You conducted the sale?—Yes, at first.

3413. But you do not know whether he paid the money?—No, for the reason I have mentioned, that it was sent down to Curle & Erskine.

3414. Mr. *Warburton.*] Were you never informed by any one?—No.

3415. *Chairman.*] Is it usual for you to act as agent, and not know whether the purchase-money is paid?—No.

3416. Has

3416. Has such a circumstance happened?—In such cases it might happen.

3417. Has it been the case that you ever acted as agent for a purchase, and never knew whether the purchase-money was paid?—Yes, there have been cases in Selkirk where the parties have agreed as to the price, and a writer has been employed merely to make out the conveyance.

3418. Here you say you agreed as to the price and drew out the deed; have you ever known such a case where you have not known whether the money was paid?—Yes, in cases where the individuals transacted the business themselves, and then applied to the writer to draw out the disposition.

3419. When you have conducted the transaction for the parties, and have drawn out the deed, have you ever known a case where you were ignorant whether the purchase-money was paid?—Yes.

3420. Before the year 1832?—Yes.

3421. When did it happen?—By referring to my books, I could see.

3422. Do you mean to say that is a usual thing?—No, I would not say it is usual.

3423. Mr. *Warburton.*] Was there one instance, or several?—I can say I have known instances.

3424. Should not you think it extraordinary?—The ordinary way is, when a man is employed to make a purchase, he sees the whole done.

3425. *Chairman.*] Did you suggest to Kemp that he should purchase this property?—I cannot recollect whether I did or not.

3426. Do you think you did?—I really cannot say.

3427. Were you employed about that time in finding properties for sale, and purchasers for them?—Yes.

3428. Do you think Kemp was one of those to whom you applied?—I cannot recollect whether I applied to him, or he to me.

3429. Mr. *Warburton.*] Was it one or the other?—I cannot say.

3430. Did you either apply to him, or he to you?—I should say the probability is, that it would be suggested by me.

3431. *Chairman.*] When you suggest to a person that he should purchase property, do you inquire or not whether he has money to purchase it?—I do not remember making any inquiries of that kind.

3432. Do you do so generally?—I do not recollect making any such inquiry.

3433. Speaking generally, when you suggest to a person that he should purchase property, when you undertake, as agent, to purchase for him, do you generally inquire whether he has the money to pay for it?—I cannot recollect whether I would do so or not.

3434. Mr. *Warburton.*] Is not your character, as a professional man, at stake in taking care there is a solvent purchaser?—I presume I am acting for the purchaser.

3435. *Chairman.*] In your professional character, as a law-agent?—The general practice is to apply to the man of business, saying that they have such a property in view, and that they wish him to make the purchase for them.

3436. In those cases where you find a property and find a purchaser, do you generally take the trouble to inquire as to his solvency?—I should not, if I had been of opinion he was not solvent, have run the risk of purchasing from the person and of his coming upon me, in fact, as an agent for an insolvent person.

3437. Mr. *Walter Campbell.*] Will you state the manner in which you make a communication that a property is for sale to such a person; do you suggest that it is a good purchase, or how?—If his object was to qualify as a voter, I should mention that such a property was to be had.

3438. You considered this entirely as for a political object, and made the purchase for that object?—Yes.

3439. Mr. *E. Buller.*] Did you suggest to him how the money might be obtained to make the purchase?—No.

3440. When you are looking out for properties to make purchases to put persons on the roll, are you in the habit of stating how the money might be provided?—There have been cases where I have said the money might be borrowed for them.

3441. Mr. *Divett.*] You state that you should not like being held responsible as being concerned for an insolvent purchaser in this case; to whom did you look for the money in case of Kemp being insolvent?—If he had not been able to pay, Messrs. Smith would have come to me; but I was satisfied Mr. Kemp was solvent

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at the time; had I supposed Mr. Kemp was not solvent, I would not have taken the responsibility.

3442. You believed Mr. Kemp was solvent, and would pay the money?—Yes.

3443. You say you did not know that Mr. Kemp was insolvent?—No, I did not.

3444. Have you reason to believe whether any person did pay the money?—I cannot say, indeed.

3445. Mr. *Warburton.*] Have you reason to suppose any person did pay the money?—No, neither one nor the other.

3446. Mr. *Divett.*] You undertook the transaction, the property was conveyed to Mr. Kemp, his name was put upon the register, and you do not know whether it was ever paid for or not?—No, I have explained that the disposition was sent to Curle & Erskine, being drawn out on simple paper; they drew it on stamped paper and completed it.

3447. *Chairman.*] You were understood to state that you acted for opposite parties?—No.

3448. Did not you state that they were employed by Messrs. Smith as living near them?—It was sent to them on account of their living near them; I did not say they were employed as Messrs. Smith's agents.

3449. Were not they employed in that transaction by Messrs. Smith?—I cannot say; the draft of the disposition was sent by me to Curle & Erskine for them to manage the transaction with Messrs. Smith.

3450. Sir *William Rae.*] The purchaser's agent sent out the draft of the disposition, and sent it to them to see it executed; was it not their duty to see that they got the price before they gave over the disposition?—I should think so.

3451. *Chairman.*] Mr. Kemp's communication with the Messrs. Smith was all through you?—Yes.

3452. If he had paid them the purchase-money, would it not have gone through your hands?—No; for the reason I have mentioned, that the transaction was not concluded by me.

3453. Were Messrs. Curle & Erskine employed on your part or on Messrs. Smith's?—I should say on my part.

3454. Who acted as agents for Messrs. Smith?—I do not know whether they had an agent at all in the matter.

3455. Were you the channel of communication between Messrs. Smith and Curle & Erskine?—Yes.

3456. If Kemp had paid the money to Curle & Erskine, must it not have gone through you?—No.

3457. Do you believe this money was paid by Mr. Kemp or not?—I really cannot say.

3458. You have no belief upon the subject?—No.

3459. Have you not been at all surprised at the rents not being asked for by Mr. Kemp?—I have been rather so.

3460. You never had any other transaction of any kind with him?—No.

3461. You have been rather surprised that he did not ask for these rents?—Yes.

3462. Mr. *Buller.*] Where is Mr. Kemp now?—He resides in Dalkeith.

3463. You stated that the rents received amounted to 40 guineas, and the expenses run to 15*l.*; is that balance of 27*l.* in your hands?—Yes.

3464. You have never paid that sum, nor any other sum to any other party, as part of that balance?—No.

3465. Mr. *Warburton.*] Has that balance ever been asked of you by any person?—No.

3466. Mr. *Buller.*] Are you aware of any other person having a claim upon that balance?—No.

3467. *Chairman.*] Are you aware of any burden of any kind upon the property?—No.

3468. You are not aware of any bill or note being given by Mr. Kemp?—No.

3469. Sir *Hugh Campbell.*] If Mr. Kemp was to ask you for that balance, would you give it him?—Yes.

3470. *Chairman.*] He has left the county?—Yes.

3471. He resides now at Dalkeith, in the county of Edinburgh?—Yes.

3472. Do you remember the date of this purchase?—It must have been from the 29th to the 31st of January 1833.

3473. Are you clear about that?—Yes.

3474. That was when it was concluded?—Yes.

3475. From these various communications between Messrs. Curle & Erskine and the other parties, it appears to have taken some time to conclude?—No, the draft was drawn out and sent down to them.

3476. The disposition is dated so late as that?—Yes.

3477. Do you remember a property being bought by the Rev. Adam Cunningham, of Esdaile Muir?—Yes.

3478. Did you act as agent in that transaction?—In drawing out the deeds, I did.

3479. By whose instructions did you do that?—By Mr. Adam Cunningham's.

3480. Can you recollect the date of that deed?—From the 29th to the 31st of January.

3481. The purchase was immediately before that, was it?—Yes.

3482. Was this purchase not thought of till late in January?—He purchased it from his uncle, Mr. Henderson, of Abbot Rule; I should say not till late in January.

3483. Are you positive of that?—Yes.

3484. Did he give any money for the purchase?—He transacted it with his uncle entirely.

3485. You know nothing at all about it?—No.

3486. Did you give Mr. Cunningham an account for the deeds?—Yes.

3487. Did he pay that account?—Yes.

3488. Has he two brothers tenants of the Duke of Buccleuch?—Yes.

3489. Has he obtained a living from the Duke of Buccleuch himself since?—Yes, on Esdaile Muir.

3490. Was this property acquired for a political purpose solely?—I should say so.

3491. At a suggestion of yours?—No.

3492. Did the deed you made out bear that any money was paid for it, or was it by gift?—A price.

3493. Do you remember the price?—Somewhere about 300*l.*

3494. But you do not know at all whether it was paid?—No.

3495. Sir *William Rae.*] Do you know the nature of the property?—A house and garden.

3496. *Chairman.*] You stated that in the month of January 1833, your father was not political agent for the tory party?—No.

3497. You were at that time?—Yes.

3498. Were you in partnership with your father at that time?—My father had an interest in the writer's business; he was retired from it; he did no business.

3499. Had he a share of the profits?—Yes.

3500. He was interested in the profits of the business?—Yes.

3501. Was not it the concern of George and Peter Rodger at that time?—No.

3502. Was the political agency of the county carried on in your office, in which he had a share of the profits?—Yes.

3503. You stated yesterday that there was a former disposition of the inn at Selkirk before the late purchase; can you procure that disposition?—I should think it would be in Mr. Horne's hands, or it may be, perhaps, in my hands; if it is in my hands it is not here.

3504. Mr. *E. Buller.*] You stated that you were frequently in the habit of suggesting to persons, to whom you suggested the purchasing property, where they might find the money; what were the usual means you suggested?—By borrowing the money.

3505. Who were the persons usually disposed to lend money under those circumstances?—In the instances where money was borrowed in was from Horne & Rose.

3506. They were the agents for the tory party?—Mr. Horne was.

3507. In what manner was the money borrowed from them?—By granting a bond for it.

3508. A bond which would give the party borrowing it a claim upon the property?—Yes.

3509. Mr. *W. Campbell.*] A personal or a heritable bond?—A heritable bond.

3510. Mr. *Divett.*] In this particular case of Mr. Kemp's purchase, did you not, in point of fact, look to some other person for the money?—No.

3511. You looked only to Kemp?—Yes.

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3512. Sir *William Rae.*] You thought him able to produce the money; that he was rich enough to produce that sum?—Yes.

3513. Mr. *E. Buller.*] When the money is so borrowed, the person holding the bond has a command over the property?—After giving certain intimations, if he wishes for his money, by advertising the property, and observing certain conditions, he can sell it for the payment of the money.

3514. Do you consider that a *bonâ fide* purchase or a fictitious qualification?—I should say where there is a part of the purchase-money, or it is entirely borrowed, it looks rather colourable or fictitious.

3515. Mr. *Warburton.*] Did you never hear any circumstances affecting Mr. Kemp's credit?—No.

3516. *Chairman.*] At the time of that proposal to buy the property there was no conversation as to whether he was able to pay for it?—No, none whatever.

3517. You state that in 1833 properties were acquired by both parties for political purposes?—Yes.

3518. Will you state how the whig party began in that year?—Mr. Spence, of Melrose, acquired a property at Selkirk.

3519. State the circumstances of that case?—He just purchased it from an individual there of the name of Walter Patterson.

3520. Was that purchased in the usual way?—I understood so; I have no knowledge of the particulars of it, but he was enrolled in 1833, on the property which he must have purchased in the January of that year.

3521. Do you suppose it was an out-and-out purchase?—I should say so.

3522. Did you ever hear that doubted at all?—No.

3523. You say that was bought for the franchise?—Yes.

3524. Had you any means of knowing that?—It was not likely Mr. Spence would have bought that kind of property, but for that object.

3525. Was it a good investment?—I cannot say; I do not recollect the price.

3526. Can you state any other instance of a vote being acquired by that party for political purposes in that year?—There was the case of Messrs. Wilson, which I mentioned yesterday.

3527. Do you know any instance of a person enrolled besides Mr. Spence in 1833, who had acquired his property for a political purpose?—None enrolled.

3528. When you state that both parties began in that year to acquire qualifications for political purposes, the only case you can bring against the whig party is that case of Mr. Spence?—Yes.

3529. Can you bring any other instance?—In looking over the list of 1833, I can bring no other.

3530. Sir *William Rae.*] Was not there a purchase made where the party was enrolled in 1832; when was the purchase made in the case of Wilson?—In 1833; I understood the question to refer to those enrolled in 1833.

3531. *Chairman.*] The only voter enrolled in 1833, who acquired a property in 1832, was Spence?—Yes.

3532. The Wilsons acquired their title early in 1833, you say?—Yes.

3533. Did you see their deed?—No.

3534. How did you know that they had purchased at that time?—By their being enrolled in 1834.

3535. In what month of 1834 had they acquired their title?—About the 22d of January.

3536. How do you know that?—From having heard they had purchased it by private sale, after the public sale had been attempted.

3537. Sir *William Rae.*] Was it the next day after the public sale the purchase was made?—It was the next day after that, I heard of it.

3538. *Chairman.*] Did you see the disposition on which they were enrolled?—It is very probable I should see the assignation to the lease in the Registration Court.

3539. You did see it?—It is likely I did, but I cannot say.

3540. Do you know the date of that assignation?—No.

3541. You cannot state that the assignation of that lease was in January 1833?—No.

3542. Your father did not act as a political agent, you say?—No.

3543. Did he sign mandates for claims?—He acted as objector, but as to signing claims, I cannot say.

3544. Did he act as objector to the party?—Yes.
3545. He acted as objector generally at the registration of 1832?—Yes.
3546. Did he sign the claims of the tory party at that registration?—I should say not.
3547. Did you sign any as agent for the party?—Yes.
3548. Did your father sign any?—I do not recollect an instance.
3549. Cannot you state positively?—To the best of my recollection, he did not.
3550. William Aitchison was enrolled as a joint tenant on Lindhope in 1832, was he not?—He was enrolled as tenant of Wester Mountbenger.
3551. Do you know whether your father signed his claim or not?—I have no recollection of his doing so.
3552. Here is on the book a copy of the claim, signed George Rodger, for claimant, by mandate; do you believe that to be a true copy?—I cannot say to the contrary; this is not his signature; but I do not see why George Rodger would be put there, if Peter Rodger signed it.
3553. You have no doubt that is correct?—I have no reason to doubt it; if there are any other instances, I should wish to see them; I am speaking from my recollection.
3554. In the year 1834, was the same system pursued of getting votes for political purposes?—Yes.
3555. Did you go on in that year endeavouring to find properties for sale, and purchasers for them to put upon the roll?—Yes.
3556. And in cases where the parties themselves were unable to pay the price, did you suggest to them an arrangement by which the money might be procured?—Yes.
3557. Was that done in many cases?—No.
3558. Was it done in several cases?—In two or three cases, I should say.
3559. Do you remember James Jardine and Elliott Armstrong being enrolled that year as joint proprietors?—Yes.
3560. Did you act as agent in that transaction?—Yes.
3561. Were you the suggester of that purchase?—I purchased the property from Ballantine.
3562. To whom was the disposition taken?—There was a minute of sale to me.
3563. What was the price?—To the best of my recollection, from 420 *l.* to 450 *l.*
3564. Did you pay it?—Jardine and Armstrong paid it together.
3565. You stated that in the first instance you took the minute to yourself?—Yes.
3566. When you made the purchase yourself, did you pay that price for it?—No; when the sellers signed the disposition, Jardine and Armstrong through me paid the money.
3567. Did you assign your interest?—That was not necessary; there was a short minute of sale on simple paper.
3568. You conveyed that minute of sale to Jardine and Armstrong?—No.
3569. Did you not state that you purchased it for yourself in the first instance?—I purchased it in the first instance.
3570. For whom did you purchase it in the first instance?—Just for any friend that would take it.
3571. You got a minute of sale, and then the conveyance was made out to Jardine and Armstrong?—Yes.
3572. And they paid the purchase?—Yes.
3573. Did you prepare the deeds?—Yes.
3574. By their directions?—Yes.
3575. Did you pay the money?—I received the money from their bank agent, Mr. Stephenson, at Langholm; he remitted the money.
3576. He remitted it from Messrs. Jardine and Armstrong?—Yes.
3577. And you paid it?—Yes.
3578. Do you know at all how they procured the money?—No.
3579. Do you know whether they raised it by loan?—No.
3580. Do you know whether there was any bond or security over the property?—There is none.
3581. Who is in the occupation now?—Gideon Forsyth and William Ballantine.
3582. Were they occupiers before?—Yes.
3583. Both those persons?—Yes.

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3584. How do they hold it now?—Forsyth's lease is still in existence, and he occupies it; and Ballantine occupies the remainder himself as tenant.

3585. As tenant to Jardine and Armstrong?—Yes.

3586. Did they give back a lease on acquiring the property?—No; I drew out the lease; it was the understanding that he was to take that part which Forsyth did not.

3587. That he was to occupy part of the premises he was then occupying as tenant?—Yes, that he should continue to occupy.

3588. Was Forsyth Ballantine's tenant before?—Yes.

3589. And he is now the tenant?—Jardine and Armstrong have a right to that lease.

3590. Did they give him his lease?—No.

3591. Mr. *Warburton.*] Is he sub-tenant to Ballantine, or tenant direct to Jardine and Armstrong?—Tenant to Jardine and Armstrong.

3592. Who has drawn the rents?—I have drawn them.

3593. What is the amount of the whole rents?—Twenty-two pounds for the whole.

3594. To whom did you account for them?—I remitted the money to their agent Mr. Stephenson, at Langholm.

3595. Did you actually remit that money to the bank agent from whom you received that money?—Yes.

3596. Do you know whether they borrowed the money from a fund for that purpose?—I cannot say; I have no idea.

3597. Mr. *Dunlop.*] When you made out the conveyance to Jardine and Armstrong, did you get it registered?—No.

3598. Is there any registered deed over that property at all?—If Jardine and Armstrong were enfeoffed, it would be recorded; but I cannot say whether they were enfeoffed or not.

3599. Was any enfeoffment taken of any part of it?—None, unless it was in favour of Jardine and Armstrong.

3600. *Chairman.*] Who paid you for preparing the deeds?—Jardine and Armstrong.

3601. Through the Bank?—Yes.

3602. Did you remit the whole rent to the Bank?—No, I deducted the expenses from the rent.

3603. You had no communication with Jardine and Armstrong, except through the Bank?—No.

3604. There was a case of joint proprietorship upon the lands of Shaws that year, was there not?—Yes, there was.

3605. Five gentlemen were enrolled upon those lands?—Yes.

3606. Did you conduct that purchase?—No.

3607. You did not act as agent?—No.

3608. You had nothing whatever to do with it?—No.

3609. You have had nothing to do with the drawing of the rents since?—No.

3610. *Lord Advocate.*] Were you not consulted about the price?—No.

3611. *Chairman.*] That was the purchase concluded by Dr. Anderson in his brother's absence?—Yes.

3612. Where his brother regretted it had been taken by the tory party?—Yes, I heard Dr. Anderson jocularly say that.

3613. Mr. *W. Campbell.*] Did Mr. Anderson come over from Ireland about the time the sale was concluded?—I do not recollect that he did.

3614. He was not in Selkirk about that time?—No.

3615. *Chairman.*] Did you ever hear it stated that the thing had been done purposely without his knowledge as to who the purchasers were?—No.

3616. What he said jocularly to you, had no reference to that?—No.

3617. Do you remember the case of William and John Scott, joint proprietors in that same year?—There were Thomas and John Scott that year.

3618. Tenants of Lord Douglas?—Of Peel and Rickerton, I think; they were tenants of Lord Douglas.

3619. Were you agent in that transaction?—No.

3620. You have had nothing to do with it since?—No.

3621. You have not intermeddled with the property since?—No.

3622. Do you know who was the agent?—Mr. Robert Rutherford of Jedburgh.

3623. Is he a political agent there?—I think he is.

3624. You

3624. You are quite ignorant of the circumstances connected with the qualification of those two gentlemen?—Quite.

3625. Did you put them upon the roll?—Yes.

3626. Did you see their dispositions at that time?—Yes.

3627. Do you know whether they gave a back lease to the persons of whom they bought the property?—I cannot say.

3628. Were you not likely to have recollected if such a thing had occu red, as you were acting for them before the Registration Court?—I did not see it before the Registration Court.

3629. You have no knowledge of any transaction of that kind?—No.

3630. You never heard of such a circumstance?—No.

3631. Do you remember the case of Messrs. Douglas buying a property, and becoming voters in Selkirk?—Yes.

3632. Did you act as agent for them?—I bought the property in the first instance.

3633. From whom?—From Dr. Anderson, on the part of James Robertson, the proprietor, who was resident at Glasgow.

3634. Dr. Anderson acted for James Robertson, the proprietor?—Yes.

3635. You acted for Messrs. Douglas?—Not for them; I just bought it.

3636. Did you get a minute of sale?—I do not think there was a minute of sale; there was a verbal agreement as to price.

3637. Was there any name given, to whom it was to be conveyed?—No.

3638. Did you afterwards make out the disposition that was made out to Messrs. Douglas?—They made it out.

3639. That was with their consent?—Yes.

3640. At your suggestion?—No.

3641. How came the Messrs. Douglas to purchase it?—After I made the purchase, I communicated to Mr. Horne that I had made the purchase.

3642. Then Mr. Horne told you that Messrs. Douglas were to take it?—He must have done so, for I saw the disposition in favour of Mr. Douglas afterwards; it was sent to Glasgow for Mr. Robertson's signature.

3643. Do you remember the price in that case?—According to my recollection, from 440*l.* to 450*l.*

3644. What was the rent of it?—The present rent is about 23*l.* a year.

3645. Was the price paid?—I do not know.

3646. You purchased the property from Mr. Robertson?—Yes, from Dr. Anderson for Mr. Robertson.

3647. Do you know whether the price was paid or not?—I should say it is paid, but I did not see it paid.

3648. You acted as agent, did you not?—No, I made the purchase in the first instance, and then communicated to Mr. Horne that I had made the purchase, and then Messrs. Douglas acquired it in the manner I have stated.

3649. Were you not responsible for the purchase-money?—Had Messrs. Douglas not satisfied Mr. Robertson, he would have looked to me for it.

3650. You bought the property in the first instance?—Yes.

3651. Did you ever receive an acquittance from the person from whom you bought it?—No.

3652. Sir *William Rae.*] He granted the disposition of it to another person?—Yes, the seller did.

3653. That would of course excuse you?—Yes.

3654. *Chairman.*] Dr. Anderson resides in Selkirk; you had certain transactions with him?—Yes.

3655. Mr. Horne resides in Edinburgh, and Messrs. Douglas in Glasgow?—No, in Edinburgh.

3656. Was the communication with Dr. Anderson not conducted through you?—When I bought it from Dr. Anderson, I communicated to Mr. Horne that I had made such a purchase; the next thing I heard was, that Mr. Robertson had conveyed it over to Messrs. Douglas.

3657. Had you no opportunity of knowing whether the money was paid?—No.

3658. You have no idea whether the money was paid?—No.

3659. Who occupies the premises just now?—There are different tenants; a man of the name of Scott, a carrier, and others.

3660. Has the occupation been changed since the premises were sold?—Yes, there is a change of tenants.

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3661. Immediately on the change of proprietorship?—No, not immediately; perhaps a twelvemonth afterwards; it is occupied by different tenants.

3662. Was there any change of the rent?—I think it was higher at the purchase than it is now.

3663. You do not know of any arrangements that were made about the price of this property?—I know that Dr. Anderson stipulated with me that the price was to be that I have mentioned, if I am right in the sum.

3664. You do not know any thing about the payment of it?—No, but I believe Messrs. Douglas paid it.

3665. Is there any burden upon the property?—None whatever.

3666. You draw the rents, you say; to whom do you account for them?—To Messrs. Douglas.

3667. Do you account regularly for them?—Yes.

3668. You transmit them regularly to Edinburgh?—Yes.

3669. You stated that in this year there were some cases in which you suggested the purchase of properties to individuals, and that you also suggested to them how you could assist them in raising the purchase-money?—There were cases where they had made purchases, where I stated to them, if they could not pay the money themselves, how it could be got.

3670. Did they follow out your intimation of procuring money in that way?—Yes

3671. In the year 1834?—Yes.

3672. Will you give an instance of that?—The case of George Scott, flesher in Selkirk.

3673. What are the circumstances connected with George Scott's case?—He bought the property, and, to assist him in paying the price, borrowed a certain part of the money.

3674. You assisted him to pay the price by borrowing part of the money, and letting him have it?—Yes.

3675. From whom was that property purchased?—A man of the name of Ballantyne.

3676. Was there any particular object in purchasing that property from Ballantyne?—Scott wished for a situation to carry on his business as a flesher, and I have no doubt he wished to qualify himself at the same time.

3677. Was there any object in purchasing that property from Ballantyne particularly?—Ballantyne was upon the roll previously.

3678. Upon which side was Ballantyne upon the roll?—He voted for Mr. Pringle of Clifton.

3679. He was a voter in the liberal interest?—Yes.

3680. And he became disfranchised by selling his property to Scott?—Yes.

3681. What was the price of the property?—I cannot say; Scott transacted the purchase himself from Ballantyne.

3682. Did you act as agent at all?—I drew out the disposition between Scott and Ballantyne.

3683. You suggested the purchase to Scott, did you not?—No; he made the purchase himself, before I knew of it, and then applied to me.

3684. You do not know the price?—I do not recollect the price.

3685. How much money did you advance him?—Two hundred pounds.

3686. Is the property let at present?—No, it is in his own occupation; he improved it.

3687. You cannot say what is the rental of it?—No, I cannot.

3688. You lent him 200*l.*?—Yes.

3689. Did he give you any security for it?—He gave me a bond.

3690. A bond over the property?—Yes.

3691. That you hold?—Messrs. Horne and Rose hold it.

3692. *Lord Advocate.*] Was it your own money you advanced?—No.

3693. *Chairman.*] Where did you get the money you advanced to him?—Mr. Rose, Mr. Horne's partner, transmitted it to me.

3694. Was the price of the property more than the 200*l.* you lent him?—Yes.

3695. Much more?—Yes, I think it was.

3696. Can you state how much more?—From recollection, I should say it was about 300*l.* he paid for it.

3697. Are you positive as to that?—To the best of my recollection.

3698. Messrs.

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3698. Messrs. Horne & Rose advanced him the money in order to acquire a franchise for him, did they not?—He came to me and said he had purchased that property; that he would require a certain sum of money to enable him to pay the price, and I said I would try and get it for him, and that was what I did.

3699. Mr. *W. Campbell.*] At the time you stated that, did he state his political feelings?—I was aware what they were.

3700. *Chairman.*] Did you prepare the disposition?—Yes.

3701. Against whom did you charge the expense of that?—Half against Ballantyne, and half against Scott.

3702. For the part of the charges against Scott, did you present the account to him?—It is standing against him in my books now.

3703. Did you ever present it?—No.

3704. Do you consider him accountable for the expense of those deeds?—Yes.

3705. For some other deeds of qualification for political purposes, the expenses have been paid to you by Mr. Horne?—Those assignations and tacks are included in my general account of the expense of the Registration Court.

3706. How came this account of Scott not to be included also?—I do not know; his agreement with Ballantyne was, that Ballantyne was to pay one-half the expense, and Scott the other.

3707. Has Ballantyne paid his half?—Yes.

3708. You have never given your account to Scott yet?—It is not rendered.

3709. Was there any other case of the same kind occurred that year?—John Johnston, jun.

3710. What was he?—A tailor in Selkirk.

3711. State the circumstances connected with his purchase?—H^{e} made a purchase himself, and employed me to make out the disposition between him and the seller, and I procured a loan to assist him to pay the price.

3712. Did you suggest that purchase to him?—No.

3713. From whom did he make the purchase?—From James M'Gregor.

3714. What was the price of it?—From recollection I should say somewhere about 300*l.*; but I will not say positively.

3715. In what circumstances was Johnston?—Just a tailor in Selkirk.

3716. Was he a man of any capital?—Just an industrious man.

3717. A man in good circumstances or poor circumstances?—I cannot say as to his circumstances; he had a good business carrying on; but I should submit these are rather delicate questions.

3718. You say you lent him part of the price; what did you lend him?—Two hundred pounds.

3719. What security did you get for it?—A bond over the property.

3720. Who advanced that 200*l.*?—Horne and Rose.

3721. Do they hold the bond now?—Yes.

3722. It is a heritable bond?—Yes.

3723. Does Johnston occupy the premises now?—Partly.

3724. Who occupies the rest?—Henderson and Patton have writing-chambers.

3725. Are Henderson and Patton his tenants?—Yes.

3726. Did you prepare the deeds in this case also?—Yes, the disposition.

3727. Against whom did you charge it?—Against Johnston, one-half to him and the other half to M'Gregor.

3728. Have you presented the account to him?—Yes.

3729. Has he paid it?—Yes.

3730. He discharged the account?—Yes.

3731. When was that?—Perhaps upwards of a twelvemonth ago.

3732. Was there any other instance of the same kind?—I should require to look over the list to answer that.

3733. Mr. *W. Campbell.*] Do you find the name of William Matheson, gardener?—Yes.

3734. How did he acquire his franchise?—From William Paterson.

3735. Do you know how he paid that money?—No.

3736. The price was paid?—I do not know.

3737. You know nothing about that case?—I bought the property in the first instance from Paterson, and communicated to Mr. Horne, and then, after communicating to Mr. Horne, I drew out a disposition in favour of Matheson.

3738. Do you know what was the price paid?—Two hundred and twenty pounds, I think.

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3739. Was it paid in cash?—I do not know.

3740. *Chairman.*] By whom was it paid?—I do not know.

3741. It was not by you?—No.

3742. Mr. *Walter Campbell.*] Is that the same Paterson who afterwards purchased a property himself?—That was William Paterson.

3743. *Chairman.*] Did you only act as agent in this purchase?—I bought it in the first instance from Paterson.

3744. Did you prepare the disposition?—Yes.

3745. Were you paid for that?—I charged it against Matheson.

3746. Has he paid you?—It has not been rendered.

3747. You do not know at all by whom the money was paid?—No.

3748. You discovered when these properties were to be sold, and you sent to Mr. Horne?—In this instance I did, and others I have mentioned.

3749. Was that a part of your business at the time?—Yes.

3750. Then Mr. Horne wrote back, and told you in what way to make out the disposition?—Yes.

3751. But you had no further discussion as to how the price was to be paid?—No.

3752. *Lord Advocate.*] Had Matheson desired you to apply to Mr. Horne?—No, I applied to him myself.

3753. How came you to apply to Mr. Horne?—Just to know whether he knew of a friend to take the property, and he gave me that name.

3754. Mr. *Walter Campbell.*] In short, this was one of the cases in which you purchased property, hoping to find a purchaser?—Yes.

3755. *Chairman.*] It was a part of your business, as agent, to find out such properties?—Yes.

3756. Who is the occupier of those premises now?—A person of the name of Hogg.

3757. Do you draw the rents?—Yes.

3758. To whom do you account for the rents?—To Matheson.

3759. Have you ever accounted to him?—No.

3760. Are those rents remaining in your hands?—Yes.

3761. What is the amount of the rent a year?—Ten guineas, I think.

3762. These rents have been remaining in your hands since the year 1834?—Yes.

3763. Have you had any other transactions with Mr. Matheson besides this?—No.

3764. *Lord Advocate.*] Is Mr. Matheson a person who can lie out of his rent for so many years?—I do not know his circumstances.

3765. What is he?—He is a gardener at Bowhill.

3766. Do you suppose that if the rents were his, he would not ask for them?—It would only be for him to ask for them, if he wants them.

3767. Do you think he conceives he has a right to them?—I think he does; I have made communications to him; Paterson, the tenant, sent to me about the account at one time, and I mentioned it, and he seemed to take an interest in it.

3768. *Chairman.*] Did he tell you to lay out any of these rents in Paterson's favour?—No.

3769. Do you know whether he conceives he is entitled to those rents?—For any thing I know to the contrary, he does.

3770. Do you conceive he is in the same situation as any other person who held a property in the county previous to the passing of the Reform Bill, for whom you might draw the rents, and act as agent?—I collect the rents for his behoof, and put them to his credit in my book.

3771. You are not his agent in any other transaction?—No.

3772. Mr. *W. Campbell.*] In several instances there were purchases on your part on speculation; did you have from any person or persons a promise, that in case of those purchases not being taken off your hands, you should be held scatheless?—No.

3773. You ran the risk of making these purchases entirely on your own responsibility?—Yes.

3774. *Chairman.*] You do not conceive that Mr. Horne is bound to take them off your hands?—No.

3775. Did you not purchase them on the part of Mr. Horne?—I communicated to Mr. Horne when I had procured them.

3776. Did

3776. Did you not say it was a part of your duty to purchase them for Mr. Horne?—I conceived I had power from my general authority as political agent to do it.

3777. Do you not conceive any body who employed you is answerable for those purchases?—I can scarcely say I was employed directly by Mr. Horne for that, but I trusted to Mr. Horne getting me a friend, or I could get a friend myself.

3778. You did not act in your personal character, but as political agent for the party?—Yes.

3779. Do you conceive that the party were bound to take those purchases off your hands?—No, I do not know that they were bound.

3780. Did you receive instructions from him to pick up these properties?—No, not as a general case.

3781. What instructions did you receive?—In the case of any property that could be got to purchase it.

3782. Those were the instructions you received from your party?—I cannot say that I received direct instructions to that effect; but I conceived, acting as political agent, I could go that length.

3783. As a political agent, were you not under Mr. Horne's directions, and under the directions of the party that employed you?—I was to a certain extent under Mr. Horne's directions, but then I took so much upon me acting for those parties.

3784. If from the power they gave you, you acted for them and purchased those properties, do you not conceive they were bound to be answerable for the purchase money?—I cannot say that they were bound.

3785. Sir *William Rae.*] Legally they were not bound, but do you mean to say that they would not be bound in honour and fair dealing to relieve you?—I would say so.

3786. *Chairman.*] Do you conceive they were in honour bound to make good those purchases; was there an understanding?—Not an understanding; but that was my feeling.

3787. *Lord Advocate.*] You supposed it was implied in the power you received?—Yes.

3788. Do not you think they were bound to fulfil what was implied in the power you received?—So far as one friend would do to another; but I do not think there was a legal obligation.

3789. Mr. *Dunlop.*] Had you the smallest doubt when you made the purchase that they would make it good to you?—I had no doubt.

3790. *Lord Advocate.*] You say that you received Matheson's rents for some years, but have not paid them over; are there any others in the same situation whose rents you have received and not paid over for the same number of years?—There was the case of Francis Binney, of Bowhill.

3791. What is his position?—He is overseer at Bowhill, attended to the farming operations, and the woods of the Duke.

3792. Did you receive his rents?—Yes.

3793. Mr. *William Campbell.*] Did you purchase the property for him?—I purchased it in the first instance from a man of the name of Nicholl.

3794. Mr. Horne or his partner found a friend to take it off your hands?—Mr. Horne found me Binney.

3795. Do you know the price paid for it?—The price has not been paid yet; the transaction was this, that Binney was to pay a heritable debt of 140*l.*, and the heritable creditor was a minor; he could not give a discharge, but Binney is under an obligation that that shall be paid when they can produce a sufficient discharge.

3796. Did you take upon yourself in Mr. Binney's name the heritable bond?—Yes.

3797. You transacted this purchase?—Yes, in the first instance.

3798. You drew the disposition?—Yes, I drew the disposition from Nicholl to Binney.

3799. *Chairman.*] What was the price of the property?—Just this, the agreement with Nicholl was, that we were to pay the bond, and he was to convey the property.

3800. You were the purchaser?—Yes.

3801. Did you pay him for it?—No; it has not been paid yet.

 3802. You

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3802. You relieved Nicholl from the bond on that property?—He has my obligation that he shall be relieved from it, when they can give me a sufficient discharge.

3803. And he conveyed the property to you in consequence?—He conveyed it to Binney.

3804. *Lord Advocate.*] What was the rent of the property?—Between 10*l.* and 11*l.*

3805. Mr. *W. Campbell.*] Have you received the rents since?—Yes.

3806. Have you paid them over to Binney?—The repairs have cost pretty nearly the amount; there was a new roof put upon it.

3807. Mr. *Dunlop.*] Was Mr. Binney enfeoffed upon it?—No.

3808. Mr. *W. Campbell.*] Has Mr. Binney ever called upon you for the state of his account?—I rendered it to him once.

3809. *Chairman.*] Who holds the heritable bond over the property?—Mr. Andrew Laing, and his brother, Mr. George Laing.

3810. Sir *William Rae.*] Has interest been paid upon it since the purchase?—No.

3811. How comes that?—Mr. Laing has not asked it.

3812. *Chairman.*] Was it necessary Mr. Laing's consent should be given to the discharge of the property?—To the discharge of the property and the debt; and in consequence of Mr. George Laing's death it could not be given; his son was not old enough to give that discharge.

3813. Then Binney is in possession of that property without having paid for it?—Yes.

3814. He is bound to relieve the property of that debt?—Yes; when the young man comes of age that will be done.

3815. Is there a tenant of the premises?—Three or four persons.

3816. Does Binney reside in Selkirk?—No.

3817. Where does he reside?—At New Wark, near Bowhill.

3818. How far is that from Selkirk?—Four miles.

3819. Mr. *W. Campbell.*] Is there any other case in which you have received rents in the same way?—I do not observe any just now.

3820. *Chairman.*] Do you know the case of five gentlemen, all writers to the signet in Edinburgh, being enrolled on one property of Francis Anderson and Henry Burn in Selkirk?—Yes.

3821. Were those Francis Anderson, Henry Burn, John Brown, Walter Jolly and Alexander Thomson?—Yes.

3822. Had you any thing to do with the purchase of that property?—No.

3823. You were not employed in any way?—No.

3824. You know nothing about it?—I know such a purchase was made.

3825. Who made the purchase?—Mr. Horne.

3826. Was he in Selkirkshire at the time?—He bought one part of it from the trustees of James Scott, then he bought part of it from Mr. Charles Scott, and the trustees of Alexander Henderson.

3827. Was he in Selkirk when you made that disposition?—I should think he was.

3828. Do you know what price was given?—I cannot recollect it.

3829. Did you prepare the deeds?—No.

3830. Who occupies the premises now?—Part of it is attached to the County Inn, and part is occupied by different tenants.

3831. Do you receive the rents?—Yes.

3832. What was the amount of the rents?—In all between 50*l.* and 60*l.* I think.

3833. To whom do you account for the rents?—To Mr. Horne.

3834. Do you account to him for them?—Yes.

3835. Did you make out the disposition?—No.

3836. Were George Oliver, John Oliver and Robert Anderson enrolled as joint proprietors that same year?—Yes.

3837. Robert Anderson and George Oliver are writers in Hawick, are they not?—Yes.

3838. Are they agents for the tory party in Roxburghshire?—Yes.

3839. What is John Oliver, is he a tenant of the Duke of Buccleuch's?—Yes.

3840. Did you act as agent in that purchase?—No.

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3841. What do you know about it?—I know that they bought part of the property from Mr. John Anderson, and part of it from a man of the name of Robertson, residing in Hawick.

3842. Do you know what they gave for it?—No.

3843. You have no idea?—No.

3844. Who is in the occupation of the premises just now?—Persons of the names of Blackall and Mercer.

3845. Did those persons who bought the property give any lease back?—I think Blackall and Mercer's lease was not expired when they bought the property; they took a lease from Robertson the seller.

3846. To whom are they now tenants?—To those three gentlemen.

3847. Do you know any thing as to the circumstances of the price, or how it was paid?—No; Mr. Robert Anderson did it entirely himself.

3848. Do you know whether a back lease was given to the seller?—No.

3849. Were there not joint proprietors enrolled on a farm at St. Helen's?—Yes.

3850. Six gentlemen?—Yes.

3851. Had you any thing to do with the deed?—Nothing more than supporting their claims in the Registration Court.

3852. Did you prepare the deeds?—No, none of them.

3853. Did you see them?—I saw them in the Registration Court.

3854. You know nothing but that?—No.

3855. Did you inform Mr. Horne of the property being for sale?—No.

3856. Who manages the property now?—I think Mr. Curle, of Melrose, draws the rents.

3857. You have nothing to do with that?—No.

3858. You have not any thing to do with the receipt of rents of the former property belonging to Anderson and Oliver?—No.

3859. Do you remember the case of Archibald Douglas, of Edinburgh, being enrolled that year?—Yes.

3860. Who is he?—He is a clerk to Mr. Horne.

3861. Was that a property acquired for the franchise?—Yes.

3862. Had you any thing to do with that?—I purchased it in the first instance.

3863. From whom?—John Biggar and John Stoddart.

3864. Did you write to Mr. Horne, and inform him of it?—Yes.

3865. What was the price you were to give him for it?—Somewhere between 200 *l.* and 300 *l.*

3866. Mr. *W. Campbell.*] The friend Mr. Horne found for it, was his own clerk?—Yes.

3867. Who receives the rents?—I draw them.

3868. With whom do you settle?—With Archibald Douglas.

3869. *Chairman.*] Was the price paid?—I do not know.

3870. You had nothing to do with it?—No.

3871. Where does the person reside from whom you bought the property?—I bought from Biggar and Stoddart; the price was paid to them.

3872. By whom?—I think it was advanced by me in the first instance.

3873. The whole price?—Yes.

3874. Who repaid you?—Mr. Horne.

3875. Was there any security taken over that property?—No.

3876. Did you charge Douglas with the price of the deeds?—Yes.

3877. Were you paid?—Yes.

3878. Do you remember Robert Patten, writer, Selkirk, being enrolled?—Yes.

3879. From whom did he acquire his qualification?—From the trustee of William Tweedie.

3880. Who was the trustee of William Tweedie?—His partner, Robert Henderson.

3881. He acquired it from his partner, Robert Henderson?—Yes.

3882. Was William Tweedie a voter on the liberal interest?—Yes.

3883. Mr. *W. Campbell.*] Was he a consenting party?—No; I think Mr. Henderson sold it under the trust deed.

3884. *Chairman.*] Do you know any thing about the price?—No.

3885. Did Mr. Patten succeed you as agent to the tory party in Selkirkshire?—Yes.

3886. He acquired the property from his own partner, which he held in trust?—Yes.

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3887. Was this property bought for political purposes?—I should say it was.

3888. Do you know any thing about the price?—No.

3889. Do you know whether there was any bond over the property?—There is a bond upon it.

3890. To what amount?—I cannot state the amount of it.

3891. Was it to any thing like the value of the property?—It was a previous bond, before the sale from Henderson to Patten.

3892. Was it a bankrupt property?—Mr. Henderson held it as trustee for behoof of Tweedie's creditors.

3893. That bond still remains upon the property?—Yes.

3894. Had Mr. Patten himself acquired it by making himself answerable for that bond?—Yes.

3895. Was Mr. Tweedie disfranchised by this proceeding?—Yes.

3896. *Lord Advocate.*] Was the bond nearly equal to the amount of the property?—I think it was just a fair security for the sum.

3897. It was as much as the property could be answerable for?—A fair security.

3898. It was as high a security as the property would fairly stand?—Yes.

3899. *Chairman.*] Is there a tenant in the premises now?—I think it is let to different tenants.

3900. Do you know who receives the rents?—No.

3901. You have no idea?—No.

3902. Was John Forrest enrolled in that year?—Yes.

3903. Who is he?—He resides at Danalton Mains, near Melrose.

2904. Is he a tenant of the Duke of Buccleuch's farm near Melrose?—Yes.

3905. From whom did he acquire his property?—From John Sheill, joiner, in Selkirk.

3906. Was that for the franchise?—Yes.

3907. Were you agent in that transaction?—I purchased in the first instance.

3908. Did you write to Mr. Horne?—No, I wrote to Mr. Curle, of Melrose, or he wrote to me, to make up the sale in the name of John Forrest.

3909. What was the price of the property?—Between 200 *l.* and 300 *l.*, speaking from recollection.

3910. Was that price paid?—Yes.

3911. By you?—Mr. Curle remitted me the money.

3912. Where does John Forrest live?—Near Melrose.

3913. In the county of Selkirk?—No, in Roxburgh.

3914. Was there a bond taken over the property?—No.

3915. Is the tenant in possession of it now?—Yes.

3916. Do you draw the rents?—Yes.

3917. Do you account for the rents to any body?—Yes, to Mr. Curle.

3918. Regularly?—Yes.

3919. *Lord Advocate.*] Why do you not account to Mr. Forrest?—My instructions were from Mr. Curle, to account to him, which I do.

3920. *Chairman.*] Do you know whether Mr. Forrest paid the money himself?—I do not know.

3921. Did you make out the deeds?—Mr. Curle drew the deed himself from the seller to Forest.

3922. Did you make out any deed at all?—Mr. Curle did, I think.

3923. You made out no disposition or conveyance?—No.

3924. Was Mr. James Rose, Mr. Horne's partner, enrolled in that year?—Yes.

3925. From whom did he acquire his property?—From some person in Galashiels.

3926. For the franchise?—Yes.

3927. Did he find that himself, or did you find it for him?—I had nothing to do with it.

3928. You know nothing about it?—No.

3929. Did you take enfeoffment upon it?—No.

3930. Do you know John Scotland, the factor to Lord Douglas?—Yes.

3931. Was he enrolled in that year?—Yes.

3932. Were you agent in that case?—I bought it in the first instance.

3933. From whom?—From George Hogg.

3934. Then after buying it, did you write to Mr. Horne, as usual, to find a purchaser?—Yes, I wrote to Mr. Horne, informing him that I had purchased it.

3935. And he wrote to you, giving you Mr. John Scotland's name?—Yes.
3936. What was the price of that?—Between 200 *l.* and 300 *l.*
3937. Was George Hogg a voter upon the opposite side to you?—Yes.
3938. He became disfranchised by this, did he not?—Yes.
3939. Was the price paid?—Yes.
3940. Through you?—It came through my hands.
3941. Who remitted it to you?—Mr. Scotland's agents, Walker, Richardson and Melville.
3942. Do you receive the rent of the property now?—Yes.
3943. Do you account to those gentlemen for it?—No, to Mr. Scotland.
3944. Is there any bond over the property?—No, none whatever.
3945. Was Alexander Stephenson enrolled in that year?—Yes.
3946. He is Baron Bailie to the Duke of Buccleuch, is he not?—Yes.
3947. Did you act as agent in that?—No.
3948. Had you anything to do with it?—Only enrolling it.
3949. Do you know anything of the circumstances of the price?— No.
3950. Nor whether there is any bond over the property?—No.
3951. Do you receive the rent for Alexander Stephenson?—No.
3952. Do you know the property he bought?—It was in Galashields, but I am not acquainted with the circumstances of it.
3953. Was Henry Anderson enrolled that year?—Yes, he was.
3954. Is he a son of the Dr. Anderson you have mentioned?—Yes.
3955. From whom had he got his property?—Mr. James Hume.
3956. Did you act as agent?—Yes.
3957. Did you take it in the first instance yourself?—Mr. Laing bought it in the first instance. Hume sold it first to a man of the name of Haitley, then Haitley sold it to me again.
3958. You bought it for the franchise?—Yes.
3959. Did you write to Mr. Horne and tell him this?—I do not recollect whether I did or not.
3960. At whose suggestion was Mr. Anderson introduced?—His own.
3961. Did you buy it for him?—I did not know him at first.
3962. You bought it for Mr. Horne, and Mr. Anderson agreed to take it?—Yes.
3963. Do you know the price?—Somewhere about 200 *l.*
3964. Was that paid?—Yes.
3965. To you?—No, it was handed over, I think, by Dr. Anderson to Hume.
3966. Do you know that was done?—Yes.
3967. Did you make out that disposition?—Yes.
3968. Who paid you for it?—Mr. Anderson paid one-half, and Mr. Hume the other.
3969. Is that property let now?—Yes.
3970. Is there any bond over the property?—Yes.
3971. Was William Fair, of Langlee, enrolled?—Yes.
3972. What were the circumstances of that case?—It was bought from Mr. John Anderson.
3973. Had you anything to do with that?—I bought it in the first instance myself.
3974. You got Mr. Fair, of Langlee to take it off your hands?—Mr. Fair and Mr. Shortree.
3975. Were they enrolled as joint proprietors upon it?—Yes, Mr. Shortree is dead since.
3976. *Lord Advocate.*] Were they enrolled in that year?—Yes, in 1834.
3977. Was the price paid?—I just communicated to Mr. Horne that I had made that purchase; I did not write out the deeds.
3978. He suggested those two gentlemen?—He got those two gentlemen to take it.
3979. Do you know whether the price was paid?—I think it was, but it did not come through my hands.
3980. Where did the seller of the property reside?—In Selkirk.
3981. If that money was paid him by Mr. Horne, would it not probably have gone through your hands?—No.
3982. When you found purchasers, was Mr. Horne in the habit of paying it directly?—Sometimes one way, sometimes another.

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3983. You were employed to find property, and make the purchase, but were not employed by Mr. Horne to pay the money?—In some of those cases I have been paid by the parties themselves, but I do not know whether they have been paid or not.

3984. The person who sold this subject lived close to you?—He lived in Selkirk.

3985. And Mr. Horne resided in Edinburgh?—Yes.

3986. Were not those transactions carried on generally by you?—Generally they were.

3987. If this money was paid, would it not have been sent through your hands?—He was not required to do so; but I know Mr. Anderson, the seller, received payment of it.

3988. How do you know that?—He mentioned it to me.

3989. Did he mention how he received it, or through whom it came?—No.

3990. Did Mr. Horne tell you the property had been paid for?—He may have done so.

3991. Mr. *Ferguson.*] Was there any objection taken when it was registered?—Nothing but the general objection to see the deed; it was not insisted on.

3992. *Chairman.*] Did you make out the disposition?—No.

3993. Did you receive the rents?—Yes.

3994. To whom do you account for them?—To Mr. Fair, and to Shortread, when he was alive.

3995. To Mr. Fair himself?—To Mr. Stephenson, of Jedburgh, the agent for both of them.

3996. What is Mr. Stephenson?—He is a writer in Jedburgh.

3997. He is their agent?—Yes.

3998. You account to him for the rent?—Yes.

3999. You have done so regularly?—Yes.

4000. Do you know whether there is any burden on the property?—None.

4001. Do you know the case of George Bainbridge, who was enrolled in that year?—Yes.

4002. State the circumstances connected with his enrolment?—I bought the property, in the first instance, and then a disposition was made out by Mr. Curle in favour of Mr. Bainbridge.

4003. Mr. *William Campbell.*] What was the price paid for that property?—Somewhere between 200 *l.* and 300 *l.*

4004. Do you know the exact price?—I cannot remember it.

4005. *Chairman.*] From whom was it purchased?—From Andrew Hope.

4006. Was the price given to him a good price?—Yes.

4007. A high price?—Yes; it was a high price.

4008. Was he a voter at the time he bought it?—Yes, he was.

4009. On which side did he vote?—For Mr. Pringle of Clifton.

4010. He was disfranchised by your buying the property from him?—Yes, he was.

4011. Mr. *William Campbell.*] What is the rent of that property?—Eleven pounds, I think.

4012. *Chairman.*] Did you make out the deeds in that case?—No, Mr. Curle made out the deeds.

4013. Do you receive the rents?—Yes.

4014. Do you account for them to Mr. Curle?—Yes, I have done so regularly.

4015. Mr. *William Campbell.*] The price you say was between 200 *l.* and 300 *l.*; was not more?—No.

4016. *Chairman.*] Are you yourself a voter in the county of Selkirk?—Yes.

4017. When did you acquire your own qualification?—In 1833.

4018. How did you acquire it?—I acquired it from my father.

4019. Gratuitously?—No.

4020. Did you pay a price for it?—Yes.

4021. Did you get a disposition from him to certain subjects?—Yes, a writing-office, garden and house property in Selkirk.

4022. What was the date of the disposition to you?—Somewhere about the latter end of January 1833.

4023. You do not recollect what day?—No.

4024. You are sure it was the latter end of January 1833?—Yes.

4025. Is that still in your possession?—Yes.

4026. Can you produce that disposition to the Committee if it is wished?—Yes, I can; but when I speak of the date, I am speaking from recollection.

4027. May it have been dated much earlier?—It may have been.

4028. May it have been dated the beginning of January 1833?—It may.

4029. May it have been dated in the end of December 1832?—I am speaking from recollection altogether.

4030. You have spoken of a good many of the dispositions being dated in the latter end of January 1833; do you speak from recollection of those?—Yes, I do.

4031. May those dispositions have been dated in the beginning of January 1833, any of them?—No, none of them.

4032. Any other disposition on which any persons were enrolled in 1833 for political purposes except your own, could not be dated earlier than the 30th of January 1833?—No.

4033. Do you speak from loose recollection, or with certainty, upon that subject?—Pretty certainly.

4034. At the end of the year 1834 you gave up acting as political agent?—Yes, after the election of 1835.

4035. That was in January 1835?—Yes.

4036. Since that you have taken no part in the political matters of the county?—None.

4037. *Lord Advocate.*] You have attended the courts, of course, during these years; has it been uniformly held by the sheriffs, that although property is burdened with heritable debt to the whole value, it still affords a franchise according to the amount of the rent?—Yes, it has.

4038. Supposing therefore a property renting from 500*l.* to 600*l.* a year, and worth 1,500*l.* or 1,800*l.*, and burdened with a heritable debt to a larger amount than the value of the property, could it still afford from 50 to 60 votes, according as there were 10*l.* rents, if it were so divided?—Yes, it would; following out the principle.

4039. Do you know generally of any cases of that nature where that has been done on either side?—No, I do not.

4040. Do you think it might be done?—I think it might be done.

4041. Sir *William Rae.*] You suppose that the debts embraced in the last question are heritably secured on the property?—Yes.

4042. Do you think a purchaser could be found for any part of that property?—He would take care they should be discharged before he bought.

4043. *Lord Advocate.*] Suppose an estate burdened with debts were transferred over to another, subject to the debt, there would be no price, of course, to be paid; would it still afford that number of qualifications?—The difficulty would be to get a person to take it if it were overburdened; if it were burdened only equal to its value, there would be no hesitation in taking it.

4044. Suppose it to be disponed to 50 or 60 persons, who took it subject to those burdens?—Then they run a risk if it is overburdened.

4045. Then the creditors could only come against the property; the property might be taken from them, but they would not be liable to pay the debt unless they agreed to do so?—I cannot conceive the case, unless they had satisfied the seller, and were to come under that obligation.

4046. Supposing a burdened estate sold subject to debts, or sold under a power of sale to the creditors?—Really I have given these general principles so little thought, I am not prepared to state the law.

4047. You stated a case of an individual property which occurred where the debt was considered equal to the value of the property, and there the person equally conveyed the franchise as if the person had paid a price for it, he taking it subject to the debt?—Yes, that was just the stipulation.

4048. Might not that equally be done with any number?—If they thought the property was equal to the debt.

4049. Supposing the debt fully equal to the value of the property, there might be any number of votes created as far as there was 10*l.* a year for each upon that property, without any thing more being done, the property being still liable to the debt?—It must pass from the possession of the debtor to the owner; if he likes to take it under that burden, it may be done.

4050. Have you known any instances of burdened estates being conveyed in that way?—No.

Mr. *Peter Rodger.*

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4051. Sir *William Rae.*] Suppose an estate burdened to its value, and the debts heritably secured upon it, sold to ten different persons; might not the creditor come against any one of those ten persons for his whole debt?—He might come against the land for the whole of the debt.

4052. Not merely for the value of his portion of it, but for the whole debt secured upon it?—Yes.

4053. Then under those circumstances, do you think any man in his senses would take such an estate?—No.

4054. *Lord Advocate.*] Supposing the value of the land is equal to the debt, and that 60 persons acquire franchises by its being conveyed to them; are they in any worse condition in case the land is taken possession of by the creditors than they would be otherwise?—No, not if it is only equal.

4055. They would not be personally liable?—No.

4056. Then they would merely get an estate burdened with debt to the amount of its value, that would continue liable to the debt, and those 60 persons would acquire the franchise according to the distribution made of the rents?—Yes; but really I would wish to say, I have given these general principles very little thought.

4057. *Chairman.*] You stated, in the beginning of your evidence, that you considered any qualification a fictitious one where a person did not acquire a beneficial interest to the amount of 10*l.* a year?—Yes.

4058. You stated, that you knew no qualifications of that kind which had been acquired in the county of Selkirk?—No, I do not.

4059. Do you know whether all those persons you have mentioned to-day had acquired an interest to the amount of 10*l.* a year?—It is my belief that they had.

4060. In the case of Francis Bonney, did you not say he had bought a property over which there was an heritable debt for 140*l.*?—Yes.

4061. That he bought that, being bound at a future period to relieve it of that burden?—Yes.

4062. You think it burdened to about its full amount?—Yes.

4063. How, then, do you make out that he has a beneficial interest of 10*l.* a year in that property?—He gets his 11*l.* of rent, at which it is let just now.

4064. Does that bond bear interest?—It will till it is paid.

4065. What interest?—Somewhere from three to four per cent.; perhaps four per cent.

4066. What is the amount of the bond?—It is for 140*l.*

4067. How much a year has he to pay interest on that bond?—Five pounds fifteen shillings.

4068. He gets 11*l.* a year in rent?—Yes.

4069. Has he to pay the burdens upon the property?—Yes.

4070. And keep up the repairs?—Yes.

4071. How can he have a beneficial interest to the amount of 10*l.* a year on that property?—It yields him 11*l.* a year.

4072. Sir *William Rae.*] By beneficial interest under the Reform Act, you mean the amount of rent, without deducting any amount of debt?—I understand it, where the property yields upwards of 10*l.* a year.

4073. *Chairman.*] You conceive that where a property yields 10*l.* a year, and the party has to pay 10*l.* burdened upon it, he has still a beneficial interest in the property?—Under the Reform Act he has that interest.

4074. Do not you consider any of those as fictitious qualifications?—None, where the property is capable of yielding that to the purchaser.

4075. Do you conceive any of the cases you have mentioned to be fictitious qualifications?—No.

4076. Mr. *Ferguson.*] You do not consider that if a person sacrifices 200*l.* or 300*l.* of his income, and thereby purchases a certain rent, that is a fictitious purchase?—No.

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Martis 7° *die Martii*, 1837.

MEMBERS PRESENT.

Mr. Divett.	Mr. W. Campbell.
Mr. Bingham Baring.	The Lord Advocate.
Mr. Fox Maule.	Sir William Rae.
Sir Hugh Campbell.	Lord Stanley.
Viscount Stormont.	Mr. E. Buller.
Mr. Dunlop.	Mr. Ferguson.

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. *Robert Haldane*, again called in; and further Examined.

Mr. *R. Haldane*.

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4077. *Chairman.*] CAN you inform the Committee generally as to the system of which you have been speaking, whether it is or not at present going on to any extent in the county of Selkirk?—I have no doubt it is.

4078. Can you say whether it is on the increase?—Decidedly, I should say it is on the increase.

4079. From your own knowledge, do you say it is on the increase?—Yes, and from a knowledge of what the other party are doing.

4080. Are you proprietor of a mill in Selkirkshire?—Yes.

4081. When was that mill built?—In the course of last season.

4082. Was that built for political purposes?—No, it was not.

4083. Have you the power of making a good many votes upon it?—Yes; I am the proprietor of it, and I can make as many votes as it will carry.

4084. How many do you suppose it will carry, if you adopt that course?—I think there may be 50 or 60 made upon it, perhaps more.

4085. Have you it in contemplation to do so?—I have had some conversation about it.

4086. Have you taken any steps as yet to put any vote upon it?—No, none.

4087. What was that conversation, then?—That if the present system is continued, I should have no objection to divide it and create votes, being paid a fair purchase-money for the life-rent qualifications of the persons who may buy; I conceive it a very fair investment, where the lives are not picked.

4088. You have gone so far as to form an intention of doing that, if the system continues?—Certainly I would, next year.

4089. Sir *William Rae.*] Was not it concluded to have some votes upon that mill last registration?—I originally took an investment in that place, and acquired a right of water-power from the town of Selkirk solely as an investment of my own; but during the last November and December and January, talking of what has been going on elsewhere, I expressed my opinion that I should have no objection, if the system were to be continued, to make life-rents upon it.

4090. Had you in view to have them registered the next registration?—No, I took no steps to do that.

4091. Was the mill in a condition to enable you to do so before the 30th of January?—The property was not altogether finished; but I think in the situation in which it was I could have made one half, if I had been inclined.

4092. The value of the mill is to consist, in some measure, in the value of the machinery?—Yes.

4093. Must not that machinery be of use before any vote can be made on a property of that description?—No; I think I could have easily let the property as it stands, without any machinery whatever.

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4094. Could you have put any vote upon it, but as connected with the machinery?—Unquestionably.

4095. Did any thing in the nature of the seasons prevent the machine being put in motion?—I had contracted to have the mill set in motion earlier, but I had not contracted for all the machinery to be put in the mill.

4096. When was the mill finished?—At a variety of dates; I think the house was finished in September or October, or probably in November; the whole of the machinery is not yet put into the mill, and a part not contracted for.

4097. When was it bargained for to be completed?—I have not made any bargain to complete at present; the part I have bargained to complete was on a variety of dates; all the months, from September down to January, to be completed at all the different periods.

4098. Was not it arranged that it was possible to have the votes put on at the next registration?—There has been nothing done to accomplish that.

4099. You do not contemplate to make the votes at the registration next August?—No, I have made no arrangements for that; I mean, the year following, that I may do so.

4100. Who are the parties with whom you had the conversation?—I dare say I have talked of it to a number of people, to a number of my own friends; and I have talked of it, not at all as a secret matter, to twenty people at least, I dare say.

4101. Did you talk to them of creating votes?—No; I have talked generally of my power to do so.

4102. Do you choose to mention the names?—I have talked of it to my own brothers as a fair investment for money, and I have talked of it to a number of persons in the town of Selkirk, when I have been there.

4103. Can you state the number of persons which you think it will carry?—No; if the water-power turns out to be more powerful, perhaps we might make a good many more than the number I have stated.

4104. As many as 70 do you think?—It depends upon the power; if the water-power turns out more than I had expected, and additional machinery put in, it will carry more votes.

4105. *Chairman.*] What is the utmost you can make of it?—The extent of power has not been ascertained.

4106. Lord *Stanley.*] Have you conversed with Mr. Douglas upon this subject?—No, I think not.

4107. Mr. *W. Campbell.*] Must not you contemplate your power before you put up your machinery?—Yes.

4108. What is the number of stones?—It is not for flour, it is for woollen.

4109. Sir *William Rae.*] How many set of engines do you propose?—Six sets of engines, I think; that would let for 600*l.*; if it were to be eight sets of machinery on the same principle, it will let for 800*l.*

4110. *Chairman.*] How many votes could you have made upon it in its present state?—Scarcely half the number; I think perhaps 25 or 30.

4111. You could have made 25 or 30 at the next registration?—Yes.

4112. Was not this property bought for the purpose of creating votes?—No.

4113. When was it erected?—I acquired a right to the water-power and I have erected the mill and built the houses by contract; I acquired a feu-right from the Burgh of Selkirk to the water-power, and have put down houses.

4114. When did you acquire that right?—About 12 or 15 months, or perhaps 18 months ago.

4115. That was the last acquisition you made?—I made only one purchase from the town of Selkirk.

4116. That was done without any political view?—Yes; I considered it strictly for an investment of my own.

4117. Viscount *Stormont.*] Are you the sole proprietor?—No, I have two-thirds of it.

4118. Who has the other?—Two brothers of the name of Inglis; they have one-third.

4119. What are Messrs. Inglis?—They are manufacturers; I let mine to tenants, and they occupy theirs themselves.

4120. Are they woollen manufacturers?—Yes.

4121. Have

4121. Have no persons taken any life-rents upon this mill as yet?—I believe the Inglis's have given their father some interest; but I have done nothing with my own.

4122. To whom else have the Inglis's given life-rents?—To nobody, to my knowledge.

4123. *Chairman.*] Are there any other cases of property, of yourself, or your friends, on which votes are proposed to be put to any extent?—I know there are a number of cases of proprietors, both singly and jointly, and on long leases, both singly and jointly.

4124. Do you know any other case of a large number of joint proprietors?—No.

4125. Lord *Stanley.*] You state that the system of which you have been speaking is on the increase, and as a proof of that, you state that you have the means, and you have had some conversation with regard to putting on 60 persons yourself; is that the ground on which you state that the system is on the increase?—No; I am aware that the tory party have bought the estate of Dalgleish, on which they propose putting on a number of votes.

4126. What number of votes do they calculate on making?—I know that life-renters are enfeoffed upon the subject; I have heard there are infeoffments made to life-renters to the number of 50 or 60, but I have not seen them.

4127. So far as your knowledge of the system goes, your only information is from your having an intention yourself of putting 50 or 60 votes upon a mill?—I know of the purchase of that property, and the report that they have divided it into 10*l.* shares.

4128. What property?—Dalgleish.

4129. Do you know any thing about that case?—I have seen an extract from the minute of sale between Beattie and Mr. John Pringle, who bought it, and I believe it is for that purpose.

4130. This case cannot yet have come judicially before any tribunal?—No, it cannot come before any Registration Court till July or August next.

4131. You know nothing at all; you only suspect there is an intention of putting on votes on that property?—I know nothing from my own knowledge; I have heard it talked of generally by a number of people, but I have seen none of the documents.

4132. Mr. *W. Campbell.*] Do you believe those reports to be true?—I do.

4133. Lord *Stanley.*] If you believe those reports to be true, from whom did you hear them?—I saw Mr. Rodger and Mr. Patten going away to pass their enfeoffments from the County Inn of Selkirk; it was said they were going to pass enfeoffments for 50 or 60 people.

4134. By whom was it said?—I saw them myself going away from the inn at Selkirk, and it was generally known and talked of in the public street of Selkirk that the estate was bought, and that they were going to pass enfeoffments for life-renters.

4135. On what ground do you believe the report?—I believe it as decidedly now as I did then; I have heard Mr. Paterson, writer in Edinburgh, say he has examined the record, and that he found the enfeoffments on the record for 50 or 60 people.

4136. Mr. Paterson is in town, is not he?—I believe he is.

4137. Sir *William Rae.*] The taking enfeoffments on life-rents is not a very common practice?—It is common both ways, both to pass enfeoffments and not, in the county of Selkirk.

4138. Can you give an instance where a life-rent has been for a political purpose, where enfeoffments have been made?—Yes, they were taken at Ferneleigh and Vuefield.

4139. Do you know whether Mr. Pringle, of Haining, has made any life-rents upon his property at Rink?—Not to my knowledge.

4140. Have you heard it by common report?—No, never till I came to London.

4141. From whom have you heard it in London?—I think I have heard it mentioned when Mr. Paterson and Mr. Rodger were present.

4142. Have you heard whether Mr. Forest, of Coniston, has made any?—No.

4143. Do you know any thing about his making votes?—No.

4144. He put on two last year, did not he?—Yes.

4145. Do you know any other cases of life-rents that are to be put on next year?—I do not recollect any other at present.

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4146. No single cases?—My impression is there are none; but there are not many, at all events.

4147. Have you prepared the deeds for any?—I think not, except in the case of the Inglis's.

4148. Are those the only ones you have prepared this year?—I believe they are.

4149. What cases of joint owners are there?—I do not think there are above two on any property at this moment; I do not recollect the state of the titles as to them, but my impression is, that there are two or three cases in which there are two people concerned in each case, and that there are a number of single cases.

4150. Have you drawn the deeds for any?—I cannot say at this moment whether I have or not.

4151. *Chairman.*] Have you in town any list of individuals that are going to be put on the roll next year?—No, I have not.

4152. Viscount *Stormont.*] Have you never made a calculation of the number of persons likely to be registered in the interest of Mr. Pringle, of Clifton?—Yes, I have a list at home, but I cannot mention the names at this moment.

4153. *Chairman.*] Is it a long list?—I think there are fewer than 40 altogether, of all kinds of cases.

4154. Lord *Stanley.*] You mean to say you cannot tell the Committee, aye or no, whether you have or not prepared deeds, or what deeds they are?—I have prepared a number of deeds; I am quite sure as to the number of cases of single proprietors, but I do not recollect the state of the title as to joint proprietors; I believe there are some of them also.

4155. Have you any cases coming on of these mutual transfers of half of houses in the two counties?—No, I think not.

4156. Exchanged life-rents?—No, I think not.

4157. Sir *William Rae.*] Are there not a number of houses building in Selkirk, with a view to the qualification?—There are a number of houses building, and I dare say some of them are building partly with that intention.

4158. Do you know of any in which that is the case?—I believe they are building partly for that purpose, and partly for investment.

4159. Do you know whether they have borrowed the money to build those houses in any case?—No, I do not.

4160. Viscount *Stormont.*] Have you lent any money for the purpose of building any house in Selkirk?—No, not at present.

4161. Have you had any negociations to that effect?—Yes.

4162. With whom?—Several people have asked me whether I would endeavour to get them some money by bond over their subjects.

4163. Upon heritable security?—Yes.

4164. *Chairman.*] Have you acceded to that?—I have said I would endeavour to get it; but up to this day I have done nothing in completion of the securities.

4165. Do you hold any bonds over properties acquired for political purposes?—I think I do.

4166. Do you hold many?—I hold at least three or four or five.

4167. Can you mention them?—I do not mean to say that the money is due to myself, but I know that the bonds were made and that I drew the deeds.

4168. Do you yourself hold any bond over any property acquired for political purposes?—Yes, I think I hold two.

4169. Will you mention those?—I lent it as connected with property the person had long before, a person of the name of Stewart, at Selkirk; I lent some money to Mr. Anderson in Galashiels, who was enrolled as a joint tenant on a long lease.

4170. What security did you get?—Bonds and assignations.

4171. Do you hold a security over any property acquired for a political purpose?—My impression is, that Mr. Anderson's object was in part to acquire a political franchise; I had lent some money on the property, and he paid part of it himself, and I have a bond and assignation as a security for the proportion I advanced.

4172. How much was that?—Three hundred pounds, I think.

4173. Viscount *Stormont.*] What was the value of the property he purchased?—Four hundred pounds, or rather more.

4174. When did you lend this money?—Two or three years ago.

4175. *Chairman.*]

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4175. *Chairman.*] In what year was it?—I cannot say the date at present; two years ago at any rate; 1834 or 1835.

4176. Viscount *Stormont.*] Was that a house that was purchased at Selkirk?—Houses in Galashiels.

4177. Who has drawn the rents since?—I do not know; Mr. Anderson has the charge of it himself.

4178. Has he paid you the interest?—Yes.

4179. Do you hold that bond yourself, or have you disposed of it?—I hold it for myself.

4180. Are you a banker at Galashiels?—Yes.

4181. Are you agent for the National Bank of Scotland?—Yes.

4182. Viscount *Stormont.*] Do you hold it in your own name, or in the name of the bank?—In my own name. It is a private transaction, the bank has nothing to do with it.

4183. What is the other case?—Stewart; he has had his property the last 20 years; I lent him money upon it.

4184. *Chairman.*] That property was not acquired for a political purpose?—No.

4185. Was that loan totally unconnected with political purposes?—I knew nothing about the man but on political matters; I cannot say whether he considered it at all connected with politics; he came to me, and I lent him the money.

4186. Viscount *Stormont.*] He was upon the roll before?—Yes.

4187. What other bonds do you hold?—I hold a bond, at least there is a bond taken in my name, and I advanced the money; I have since assigned it; it is granted by John Henderson, in Selkirk.

4188. Was that a property he purchased?—He was on the roll in 1832.

4189. Is that John Henderson connected with Clezy's house?—No.

4190. *Chairman.*] Was that for a political purpose?—I consider it very much like the first I mentioned.

4191. Do you hold any bond over property acquired for political purposes; Henderson's and Stewart's, you say, were not acquired for that purpose?—No.

4192. Anderson's, you consider as having been acquired for a political purpose?—Yes, partly so.

4193. Do you hold any bond over any other property acquired for a political purpose?—No, I think not.

4194. Viscount *Stormont.*] What is the value of this house of Henderson's?—It first belonged to him; he executed a deed of trust, and got it conveyed back to him by his trustees, at the price of 200 guineas, I believe; it was worth a good deal more.

4195. What is the amount of the bond?—Two hundred and fifty pounds.

4196. Do you conceive the house ought to be worth more than 200 guineas?—I do.

4197. How much more?—Counting it in the same way as I have seen other property selling in Selkirk, I think it is worth at least 100*l.* more; it is letting for nearly 20*l.* a year.

4198. Had Henderson expressed a desire to sell his house?—It was in the hands of trustees for several years; they had not sold it, and he got it back from those trustees.

4199. Since he got it back from those trustees has he expressed a wish to sell the house?—Not that I am aware of.

4200. Has he offered it for sale?—Not that I am aware of.

4201. Was the money lent to prevent that property being sold?—I do not know; he made the arrangement himself with his trustees.

4202. What was your object in lending the money to him?—My object partly was, that he was a voter with the liberal interest of 1832, and I wished to preserve him upon the roll.

4203. Lord *Stanley.*] You lent that money for political purposes, and not solely as an investment?—I would have had no connexion with Henderson in that transaction, I think, but for politics.

4204. *Chairman.*] Did you know that the property would be sold if you did not lend the money?—No, he might have had other ways of getting the money; I was not aware how he stood in that respect.

4205. Was that stated to you as an inducement for lending it?—I cannot say.

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4206. Was it stated to you as an inducement to lend him that money, that if you did not lend it him his property might be sold?—I do not remember any conversation at all about it in that way.

4207. Lord *Stanley.*] Did not you say just now that you desired to keep him upon the roll?—Yes.

4208. What reason had you for believing he would not be upon the roll if you did not lend him the money?—He would have been upon the roll if any other person had lent it.

4209. You lent him the money from your desire to keep him upon the roll?—Yes, to keep him upon the roll, to have a chance of his voting in the same manner.

4210. Why did you think it likely that he would not remain upon the roll unless you lent him the money?—The trustees had the power of sale to anybody, and I have no doubt they might have exercised it; they had it in their power to bring it to public roup, but they did not.

4211. Did you expect they would sell the property; was that your reason for lending him money?—I believe they had thoughts of selling the property.

4212. Was that your reason for lending him the money?—I do not recollect that I had any conversation with him upon that; my motive for lending him the money was to secure that man's vote; that was certainly my feeling.

4213. Viscount *Stormont.*] Was that the case with Stewart also?—I have no doubt it was partly my motive for advancing the money.

4214. Was it your motive to secure the vote?—Certainly, that was my object for connecting myself with Stewart.

4215. It was for a political purpose, to secure his vote?—I would have lent him the money whether he had been on the roll or not, considering the security good and the interest larger than could be got elsewhere.

4216. Was that your reason?—I think I should not have known the man at all but for that reason.

4217. Was your reason for lending him the money a political one?—My object certainly was to keep him upon the roll.

4218. Was the object of keeping him upon the roll your reason for lending him the money?—Not the sole reason; I would have lent it upon the security of his property, independently of that.

4219. Would you have done it but for that reason?—I think it is probable I should have had no connexion with him but for that reason.

4220. Mr. *William Campbell.*] You would not have known him but for the circumstance of his being a political partisan?—No.

4221. *Chairman.*] What interest did you get for it?—Five per cent.

4222. Is that paid?—His property was lately sold, and I got the money a few days before I came here; I got the amount of the bond and the interest upon it.

4223. Viscount *Stormont.*] You do not hold the bond now?—No.

4224. What other cases are there now of joint bonds?—I have no other bonds, I believe.

4225. What other cases are there in which you hold bonds of other persons?—I do not think I took any others.

4226. You stated that there were four or five cases in which you held the bonds of other people who had lent money?—Where I know of money to be lent I do not hold the bond; my belief is, that no other bond is held than that in the hands of the people who lent the money.

4227. You acted simply as agent?—Simply as agent.

4228. *Chairman.*] Were you employed as political or private agent?—As private agent in the other transactions.

4229. Viscount *Stormont.*] As agent for a political purpose?—Being the agent of the liberal party, I certainly interested myself in getting the money.

4230. Will you state those cases?—I mentioned a case of the name of Robertson; George Robertson.

4231. When was he registered?—He lent money upon the property of Gray, in Galashiels.

4232. When was Gray registered?—In 1834.

4233. What is the value of Gray's property?—Upwards of 300*l.*

4234. What is the amount of the bond?—Two hundred pounds.

4235. Was

4235. Was that money procured for the purpose of preventing the sale of Gray's house?—No; Gray was the purchaser; Gray is upon the roll; he was not selling, he was purchasing.

4236. The question does not allude to any cases you may have transacted for parties made prior to the year 1836; but cases where money has been lent since the party has been upon the register?—I do not recollect that I have a single case in 1836, of a money transaction of that kind.

4237. *Chairman.*] Will you state any cases of a bond given for money advanced to enable parties to get upon the register?—I could not answer that at this moment; perhaps, on reflection, I might think of cases, but I cannot state positively whether those were the only cases or not.

4238. Do not the former answers you have given apply to that question?—Yes, I just state the instances within my recollection; there may be other instances not within my recollection, speaking at the moment purely from memory, and not expecting to be examined upon it.

4239. *Lord Advocate.*] Have you stated all the cases you recollect?—I do not recollect any others at this moment.

4240. Viscount *Stormont.*] Do you know of any cases where parties who were upon the register have come to you, and asked you either to lend them money or to procure them money from somebody else, for the purpose of keeping them upon the register?—No, I do not recollect any such case.

4241. Have you lent any money to any person who is building a house, for the purpose of getting a vote?—No.

4242. You stated that there were a great number of new houses building in Selkirk; has not money been borrowed for that purpose?—None, that I am aware of; I have lent none.

4243. Do you know of any cases of joint tenants who are coming on the roll this year?—Yes, I recollect one.

4244. What case is that?—I recollect one, the case of two brothers of the name of Purvis.

4245. Whose tenants are they?—Mr. Pringle's, of Clifton.

4246. Had either of them been tenants previously?—They are tenants of Mr. Pringle, in Roxburghshire.

4247. Lord *Stanley.*] Are they being put on this year in Selkirkshire?—Yes, I expect so.

4248. On what description of property?—Upon houses in Galashiels, as long lease tenants; they have bought property on long leases in Galashiels.

4249. Viscount *Stormont.*] Have they paid for it?—Yes.

4250. With their own money?—Part their own money, part they have borrowed.

4251. From whom?—A person of the name of Hislop.

4252. What is he?—He is a blacksmith.

4253. In Galashiels?—No, 12 or 15 miles out of it.

4254. Do you know any cases of joint agricultural tenants?—I know of one case, Messrs. Penicuik, farmers, at Hartwood Myers, in Selkirkshire; I know there are some of them who will claim to be put on the roll.

4255. How many of them?—Three of them, I believe.

4256. Whose tenants are they?—Mr. Ogilvie's, of Hartwood Myers; Mr. Curle, of Melrose, is Mr. Ogilvie's agent; I believe he did the business.

4257. Do they live upon the farm?—I believe two of them do.

4258. Is Mr. Curle the agent of the tory party?—Yes; I know of those parties on that farm; they are likely to be claimants next year; the other is for another farm.

4259. Is Mr. Ogilvie of the tory party?—No, he votes on the liberal side.

4260. Mr. Curle is his private agent?—Yes, Mr. Curle let those lands for him.

4261. Who have taken them?—The Penicuiks.

4262. Three tenants all of that name?—Yes.

4263. What relations are they?—Brothers.

4264. Are they all farmers?—Yes; the oldest lives on a separate farm, and those two, I think, upon that farm, so far as I know.

4265. *Chairman.*] Had the old lease expired?—Yes.

4266. They entered upon a new tack?—Yes.

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4267. Viscount *Stormont.*] Is there any other case that you know?—I do not recollect any others.

4268. Has Lord Minto let a farm to four individuals?—I have heard so; but I understand that was only within the last two or three months.

4269. That would not come upon the register this year?—No, so far as I know.

Mr. *Peter Rodger*, again called in; and further Examined.

Mr. *Peter Rodger.*

4270. *Chairman.*] YOU stated that you knew an instance of some land in the neighbourhood of Selkirk, belonging to Mr. James Scott, selling for thirty years' purchase; who was the purchaser of that land?—Mr. George Laing.

4271. Did that property adjoin some property of Mr. Laing's?—Yes.

4272. Was that close to his own house?—Not to his house; it adjoined his property.

4273. Adjoining the property on which his house stood?—Yes.

4274. Did it lie in to that land?—It just adjoined it.

4275. Was there a corner in which this land lay?—I do not understand the question.

4276. Was it at all surrounded by Mr. Laing's property?—Not surrounded, but adjoining it, for a considerable space.

4277. Was the boundary rather irregular?—Where it joined it was irregular.

4278. And this lay in to that land?—Yes.

4279. Was it a great object to Mr. Laing to get that property?—I conceive it was.

4280. It was worth more to him than to any other person?—I should think it was.

4281. Had you made any offer for the inn at Selkirk, previous to Mr Horne's arrival?—No.

4282. You had had some conversation with Wilson, the proprietor, upon the subject of purchasing it?—Yes.

4283. Had the negociation gone to any extent before Mr. Horne's arrival?—I understood what Mr. Wilson's terms might be.

4284. Had you communicated those to Mr. Horne?—I cannot recollect just now whether I had or not.

4285. Was it by Mr. Horne's desire you entered into that negociation?—I should rather doubt whether it was not by Mr. Pringle's (of Whitebank) authority that I inquired of Mr. Wilson on what terms he would part with the property.

4286. Was Mr. Horne aware, when he came down, that any negociation had been going on with Mr. Wilson upon the subject?—I think it is most likely that I mentioned it to him.

4287. Can you state positively whether he knew it?—I cannot.

4288. Had you seen Mr. Horne previous to his coming down to Selkirk?—No.

4289. Then you must have written it to him, if he knew it?—Yes.

4290. Was the bargain concluded immediately on Mr. Horne's arrival?—It was concluded the first meeting Mr. Horne had with Wilson.

4291. How soon after was the disposition made out?—The bargain was concluded on the 25th of January; the disposition was signed by Wilson on the 28th.

4292. Was Mr. Horne at Selkirk during all that time?—No, I do not think he was.

4293. Was there any missive of sale?—There was a missive of sale between Mr. Horne and Mr. Wilson.

4294. That preceded the signing of the disposition?—Yes.

4295. You think Mr. Horne was not at Selkirk from the 20th to the 25th?—I think he was at Selkirk on the 25th, when he made the bargain with Wilson.

4296. You made out the disposition?—Yes, I drew it.

4297. Did you make it out immediately after the purchase?—I think I did.

4298. Did Mr. Horne arrive at Selkirk many days before the sale?—I think I recollect seeing him at Selkirk on a day previous to the 25th.

4299. When Mr. Horne arrived at Selkirk he must have come with the names of those individuals to whom the disposition was made?—No; I drew out the disposition,

disposition, and Mr. Horne told me who were to be the purchasers; it was sent to Edinburgh to Mr. Horne.

4300. When you drew out the disposition, did you insert the names of the purchasers?—They were inserted in Edinburgh, I think.

4301. You drew out the disposition, leaving the names of the purchasers in blank?—Yes.

4302. Do you recollect that distinctly?—I am almost certain that was the case.

4303. Is it a common thing for you to draw a disposition, leaving the names blank?—This was a draft on simple paper.

4304. Did you then draw the disposition by which those parties acquired their title on the 25th, immediately after the sale?—Yes, the draft of the disposition.

4305. By whom was the disposition itself drawn out?—It was extended by my clerk.

4306. On what day?—On the 28th.

4307. On the 28th were the names of those purchasers inserted?—Not in the draft I prepared, but in the principal deed, signed by Wilson.

4308. Were the names of all those purchasers left blank?—To the best of my recollection, I drew out the disposition on the 25th, and between the 25th and the 28th those names were inserted in that draft of disposition; then when it was filled up it was re-extended on stamped paper.

4309. On the 28th the names of those individuals were inserted?—They had been previously inserted on the draft.

4310. In fact you were in possession of the names of the ten individuals by whom that property was acquired previous to the 28th?—Perhaps on the day on which the deed of disposition was returned to me from Edinburgh.

4311. Were you in possession of the names of those individuals previous to the return of the deed of disposition from Edinburgh?—It must have been either on the 27th or 28th.

4312. The original draft of disposition was made on the 26th?—Either the 25th or the 26th.

4313. That deed was extended on the 28th, and previous to that the names of those persons were inserted in the draft?—Yes.

4314. On or before the 28th you were in the possession of the names of those purchasers?—Yes.

4315. Did Mr. Horne stay in Selkirk long after the purchase?—I really cannot recollect just now how long he remained, or where he went.

4316. Did not the sale of Batts, and the lease that was given back, occur about that time?—Yes.

4317. Does that bring to your recollection whether Mr. Horne continued in Selkirk during that time?—He returned to Edinburgh, from the circumstance of my having sent the draft of the disposition to Edinburgh, and its coming back with those individuals' names inserted; he must have returned.

4318. Viscount *Stormont.*] Did not he go to Roxburghshire immediately after this?—I cannot say.

4319. *Chairman.*] When Mr. Horne concluded that purchase, did you know that he knew the persons for whom it was purchased?—I did not know; I do not know whether Mr. Horne did.

4320. Can you state whether he was possessed of the names which were to be inserted in the deed?—I cannot state that.

4321. In that year you suggested the matter of the life-rent of James Simpson?—Yes.

4322. Was the creating the life-rent in that manner your own suggestion, or a suggestion from Mr. Horne?—It was from himself; Mr. Simpson said he could qualify his brother.

4323. Did the suggestion first proceed from you or from Mr. Simpson?—Mr. Simpson.

4324. Will you refer to your answers to questions 3120 and 3121; was that which is referred to your own suggestion, or was that mode of creating a vote suggested to you by any other person?—An idea of my own.

4325. You stated that you had never known a life-rent of that kind before?—I do not recollect having transacted any thing of the kind before; but I know that in our style-books we have forms for such deeds.

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4326. You stated that you had never known before an instance of a person conveying a life-rent and retaining the fee; was that your own idea, or did you get instructions from any other person?—To the best of my recollection, when Mr. Simpson said he could qualify his brother, I said, "then give him a life-rent of part of your Selkirk property," and I just wrote out the disposition accordingly.

4327. Without having that instruction from any other party?—Yes.

4328. Sir *William Rae.*] You found the form for that deed in the style-book?—Yes.

4329. The style-book contains only forms of what are usual in conveyancing?—It contains forms for various modes of conveying property.

4330. *Chairman.*] Do the styles contain the form only of deeds which are usual?—Generally speaking, that is the case.

4331. Do you mean by that that this mode of conveying life-rents was usual?—No.

4332. Against whom did you charge the account for this?—William Simpson.

4333. Is that usual?—That is often a matter of stipulation between the seller and the purchaser, and the reason for charging it against him was, that as he had given it as a gift to his brother, I therefore charged him with the expense.

4334. When it is a gratuitous deed, is it always the case that you charge the expense against the grantor?—My experience in gratuitous deeds is not sufficient to enable me to answer that question.

4335. Can you state what is generally the practice in gratuitous deeds?—There are so few between persons when alive, that I cannot speak to the practice.

4336. To whom did you give the disposition when you made it out?—I held the disposition.

4337. Was it ever delivered to the grantee?—No.

4338. Do you hold it now?—I think I do.

4339. Do you know whether usually delivery is necessary for the perfecting a transaction of that kind?—No, you may hold it for the grantee.

4340. Did you act as agent for the grantee upon this occasion?—I held the disposition for his behoof, I conceived.

4341. Had you any authority to hold it for his behoof?—Yes, for I recollect William Simpson desiring me to go to Mr. Thompson, who used to collect the rents of his own property, and to tell him to collect them on behalf of James Simpson; he told me to give him that direction.

4342. You made this disposition by the orders of William Simpson, and you charged him with the expense?—Yes.

4343. Was there any thing in the form of delivery in that case?—Not in the way of handing over the disposition to his hand.

4344. Was there any form of delivery in that case?—Not in respect of that deed.

4345. Did you not say that you drew the disposition in that case?—Yes, that I drew out the draft of the disposition.

4346. But you did not extend it?—No.

4347. Curle & Erskine were employed to extend it?—Yes.

4348. Were you paid for what you did upon that occasion?—No.

4349. In the case of the joint tenants on the Duke of Buccleuch's estate, by whom were you employed to draw those assignations which you drew from tenants to their sons or others?—By Mr. Horne.

4350. By his authority you sent him the account for the expenses?—Yes.

4351. In the case of Fair and Shortreed you did not act as agent?—Not in drawing out the deeds.

4352. Can you state who was the agent?—They were drawn out by Mr. Horne.

4353. There is the case of George Scott, flesher, Selkirk, to whom you lent some money to purchase a house?—To assist him in paying the price of it.

4354. A bond was taken over the property?—Yes.

4355. Does that bond bear interest?—Yes.

4356. What interest?—From 3½ to 4 per cent.

4357. Has that interest been paid?—Not to my knowledge.

4358. Can it have been paid without your knowledge?—Yes, the bond is not in my hands now.

4359. You acted as agent throughout the transaction, did you not?—I got a loan for him.

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4360. Can you state whether or not interest has been paid upon that?—To the best of my belief it has not.

4361. You stated that you charged half the expense against Ballantine and half against Scott; that Ballantine had paid his, but Scott had not paid his?—Yes.

4362. Have you any other claim against Scott, besides that for making out this disposition?—Yes, some on private matters.

4363. Have you any other claim against him, connected with this property?—Yes, for insurances advanced for him.

4364. Have you paid those insurances?—I advanced them.

4365. Those are standing in your books against Scott?—Yes.

4366. Have you any other claim against him?—None, that I recollect.

4367. When a person gives a heritable bond over a property, must he not take enfeoffment upon that property?—He does not require to do so, but it makes the security complete by taking enfeoffment.

4368. Is it not usually done?—It is generally done.

4369. Was it done in this case?—No.

4370. Who prepared the heritable bond?—Horne & Rose.

4371. You had nothing to do with it?—No.

4372. Was enfeoffment taken upon that bond?—No.

4373. Is not that always usual?—It is the usual way.

4374. Enfeoffment was not taken either upon the property or the heritable bond?—Upon the property it was; Scott was enfeoffed upon the property, but not the creditors upon the bond.

4375. Who took enfeoffment?—If it was burgage, I should take it in my capacity of town clerk, and I think I did so.

4376. There was some expense on taking enfeoffment on the property?—Yes.

4377. Who paid that?—Scott.

4378. That is still standing in your books?—Yes.

4379. Did any person act as agent for Mr. Scott in this matter?—No.

4380. No one advised on the deeds?—No.

4381. In any transaction in which you are engaged at present, are you in the habit of charging them to one individual, the part of the expenses forming the outlay, and the profits to any other party?—No.

4382. Have you ever done so?—No.

4383. There was a case in which you stated that Johnson, a tailor, at Selkirk, had purchased a property in which you assisted him by a loan of money; did he pay his share of the expenses of the disposition?—Yes.

4384. Was this a case similar in all other respects to the case of Scott, whom you have just referred to?—I should say very similar.

4385. How happened you then to present your bill to Johnson for the payment of those expenses, and not to Scott?—Scott has a counter claim against me just now.

4386. Previous to this transaction?—No.

4387. Subsequent to this transaction?—Yes.

4388. Did that originate in this transaction?—No.

4389. What is the nature of it?—It is an account for butcher's meat.

4390. Do you consider those expenses and Mr. Scott's expenses as owing to you individually, or owing to you as agent for that party?—Owing to me individually.

4391. Not as political agent for that party?—No.

4392. Did you not procure the money for Mr. Horne for a political purpose?—I paid the purchase-money myself, and to enable Scott to do so, I procured him a loan.

4393. Did not you make out the deeds as political agent of the party?—I cannot say as political agent altogether.

4394. Had you any transaction with Scott previously?—No, I think not.

4395. Did you or did you not act in that matter as political agent for the party?—I considered myself out and out employed by Scott.

4396. Has any enfeoffment been taken upon this property of Johnson's?—Johnson is enfeoffed.

4397. But the heritable creditor is not enfeoffed?—No.

4398. Does the bond bear interest?—Yes.

4399. Has that been paid?—Partly.

4400. What interest does it bear?—From 3½ to 4 per cent.

4401. What interest has been paid?—A twelvemonth's, I think.

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4402. The interest since has not been paid?—No.

4403. Has he been asked for it?—Not to my knowledge.

4404. To whom is the rent paid by Messrs. Henderson and Paton?—To Johnson.

4405. To him personally?—Yes.

4406. Did he pay the expenses of enfeoffment?—Yes.

4407. Did you act for Johnson, as agent, in the loan, or had he any other agent?—Horne & Rose might be considered as the agents in the loan.

4408. Did they draw up the heritable bond?—Yes.

4409. You were not the agent acting for him in that?—No.

4410. They acted in that, both for themselves and him?—Yes, I conceive so.

4411. You executed a disposition to William Matheson, gardener to the Duke of Buccleuch?—Yes.

4412. What did you do with that disposition after you had executed it?—I kept the disposition; the minute of the sale was made out by me.

4413. By whom was the disposition granted?—By William Paterson, who sold the property.

4414. Was he a writer?—No, a hosier.

4415. Did you draw out the disposition?—I drew out the disposition.

4416. Did you draw out the disposition or the copy?—Both, I think.

4417. Who has the disposition?—I think I have it.

4418. Was it ever delivered to Matheson?—No.

4419. Had you ever any communication with Matheson before you drew that disposition in his favour?—I do not recollect any.

4420. Has any enfeoffment ever been taken upon the property?—Yes.

4421. By whom was that taken?—By me, as town clerk.

4422. By whom was the expense paid?—I charged it against Matheson.

4423. Who acted for Mr. Paterson, the purchaser?—No person.

4424. Was he paid the purchase money?—Yes.

4425. By whom?—By me; and I wish upon this point to correct my former evidence in No. 3736; the question is, the price was paid, and I say I do not know now; what I mean to say is this, that if that applies to whether it was paid to the seller, or not, I was wrong; but if it means whether it was paid by Matheson, it is correct.

4426. Was the price paid to the seller?—Yes.

4427. By whom?—By me.

4428. Where did you procure the money?—I advanced it.

4429. Did you advance it by anybody's instructions?—When Mr. Horne authorized me to make the purchase for Matheson, I advanced it, and Mr. Horne in the course of a short time repaid me.

4430. Did Mr. Horne take security on the property?—I do not know.

4431. Do you draw the rents for Matheson?—Yes.

4432. By whose authority?—By Matheson's authority.

4433. When did he give you that authority?—He is aware that I draw the rents.

4434. Mr. *W. Campbell.*] You were understood to say you never had any communication with Mr. Matheson?—I meant previous to the sale.

4435. *Chairman.*] Have you had communication with him since the sale?—Yes.

4436. Has he given you authority to draw the rents?—No express authority; but he is aware that I draw them.

4437. Had you authority from him to draw them?—No express authority.

4438. Had you authority from anybody?—No.

4439. You have been drawing the rents without any express authority whatever?—Matheson is aware that I have been drawing those rents, though I have never been directed by him to draw them.

4440. Are the rents in your hands now?—Yes.

4441. Have you ever paid them over to any person?—No.

4442. Has Mr. Horne ever communicated to you any particulars of his conversation with Matheson?—No.

4443. Mr. *Maule.*] Could you at any time cancel the deeds, of your own accord, on which Matheson holds this vote?—No.

4444. *Chairman.*] Will you recal to your recollection the circumstances respecting the vote of Mr. Francis Binney; had you any communication with

Mr.

Mr. Binney before you made that purchase?—Nothing further than hearing him say he wished to be qualified as a voter. Mr. *Peter Rodger.* 7 March 1837.

4445. Had you any authority to buy that property for him?—Not that individual property.

4446. You draw the rents now?—Yes.

4447. By whose authority do you draw the rents?—I consider by Mr. Binney's authority.

4448. Have you ever received any express authority upon that subject?—No express authority.

4449. Did you receive authority in any matters connected with this property from him?—I got his authority to enter him burgess, before we could get divetts and stones for repairing the property, and he authorized me to advance the fees for him.

4450. Did he authorize you to make repairs upon the property?—Yes.

4451. He authorized you to make the repair you have already made?—Yes.

4452. Did you get his express authority on each occasion?—I cannot say express.

4453. You say you have drawn the rents, and expended them on repairs?—Mostly on repairs.

4454. Had you his authority for expending them on repairs?—Yes.

4455. But you have not his authority for drawing the rents?—I had no express written authority; but I considered that I was drawing them with his knowledge and his approbation.

4456. What reason have you for conceiving that?—I just told him occasionally that such repairs had been made, and he always seemed to approve of it.

4457. Had you any previous authority from him?—No.

4458. Mr. *Dunlop.*] Did you ever speak to him with regard to drawing the rents or making repairs?—Yes.

4459. *Chairman.*] Was that subsequent to your having drawn the rents or made the repairs?—During the course of the time I did so.

4460. Did you draw out the disposition?—Yes.

4461. Has it ever been delivered to Binney?—No, it is still in my hands.

4462. Have you ever been paid for drawing out that disposition?—No.

4463. Have you ever presented the account to any one?—No.

4464. Against whom have you charged it?—Mr. Binney.

4465. Under what authority did you make the repairs on the building, if you were acting merely as agent for Mr. Binney?—On the verbal authority of Mr. Binney.

4466. Previous to the repair being made?—Yes, previous to the new roof being put upon it.

4467. Before that was done, did you ask his permission to put on that new roof?—I consulted with him upon the matter.

4468. Did you tell him this new roof was required for the building?—Yes.

4469. Did he give you authority to get that new roof?—Yes.

4470. He gave you verbal authority to do that?—Yes.

4471. Sir *William Rae.*] Was that the property for which you applied to the burgh of Selkirk for permission to take stone and other materials?—Yes.

4472. Was that for the purpose of this roof?—Yes, before we could get materials.

4473. Mr. Binney gave you authority to apply to the town of Selkirk for that purpose?—Yes, and to pay his fees for his burgess admission.

4474. *Chairman.*] Who acted for Mr. Nicholl?—No one, I think.

4475. Do you mean that there was no agent employed for Nicholl?—Nicholl said he would part with that property on being relieved of the debt.

4476. Did you act as agent for both parties?—No, I do not conceive I was acting for Nicholl.

4477. That was the property which was conveyed on which there was a heritable bond?—Yes.

4478. There was no price given except relieving Nicholl of the bond?—The amount of the bond was mentioned as the price in the disposition.

4479. Was no cash of any kind given to Mr. Nicholl?—No.

4480. Was no inducement given him to part with the property?—No; he received some few shillings for a few fixtures that he claimed.

4481. No bonus of any kind was gven to him to part with it?—No.

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4482. Did you make out a disposition to Archibald Douglas?—I did.

4483. Had you conducted a purchase for him?—Yes.

4484. Was the purchase-money paid for that property?—Yes.

4485. Who paid it?—I paid it, in the first instance.

4486. To whom?—To John Biggar and John Stoddart, who sold it.

4487. Were you repaid?—Yes.

4488. By whom?—By Mr. Horne.

4489. Did you not state the other day that you did not know whether the price was paid or not?—I wish to give the same explanation here that I did in the other case, that I know it was paid to the seller.

4490. What did you not know?—I did not know how Mr. Douglas paid it.

4491. You know it was paid by yourself to the seller?—Yes.

4492. And you know you have been repaid?—Yes.

4493. You state that there was a bond over property purchased by a son of Dr. Anderson's?—That is a mistake; I observe I am made to say that there was no bond.

4494. Were you the agent in a transaction in which two Mr. Graingers acquired a property?—No.

4495. You know they were inrolled in that year?—Yes.

4496. Who was the agent?—Mr. Horne.

4497. Had you nothing whatever to do with that?—No.

4498. Did you find out the property in the first instance?—No.

4499. Did you draw out the diposition?—No.

4500. Do you know whether enfeoffment was taken upon it?—Not to my knowledge.

4501. Had you any thing to do with making out a disposition to Mr. Charles Bailey?—No.

4502. You stated that you gave up being political agent in the beginning of 1835?—Yes.

4503. At that time there had been some purchases made which came on the roll at the end of 1835, after you ceased to be agent?—Yes.

4504. Were there not a good many purchases in the year between January 1834 and 1835 which you were concerned in?—Very few.

4505. Were you agent in the case of James Blackwood at Edinburgh?—Yes.

4506. Was he an apprentice to Mr. Horne?—Yes.

4507. Were you concerned in that?—No; he feued from Mr. Grainger part of his park, and built a house upon it.

4508. Did you make out the deed?—No.

4509. Had you any thing to do with that transaction?—I draw the rents just now.

4510. Do you know the price of that?—No.

4511. What is the amount of the rent?—From 11 *l.* to 12 *l.*

4512. Do you account for it to any one?—To Mr. Blackwood.

4513. Have you done so regularly?—Yes.

4514. You do not know how Mr. Blackwood acquired his title, or how it was made out?—It was made out by Mr. Horne.

4515. Did you ever see it?—I saw it in the Registration Court.

4516. It was brought by Mr. Horne?—Yes.

4517. Have you in your possession the original lease of Batts?—I have a copy of it.

4518. Who has got the lease?—Either Curle & Erskine or Mr. Horne.

4519. The lease is to yourself, is it not?—No.

4520. Whom is it to?—My father.

4521. Are not you one of his representatives?—Yes.

4522. Do not you manage the property for the rest of them?—Yes.

4523. In whose possession is the lease?—I have a copy of the lease; I think the principal must be in Mr. Horne's hands or in Curle & Erskine's.

4524. Mr. *W. Campbell.*] How comes it out of your own hands?—It is not customary for the tenant to keep the principal lease, he just gets a copy of it.

4525. Is this an authenticated copy?—No, just a copy.

4526. *Chairman.*] From whom can that lease be procured?—From Mr. Horne or Curle & Erskine.

4527. Mr. *W. Campbell.*] Is it not the custom invariably that there are two copies of the lease made out, that the tenant has one and the landlord the other?—There

—There are generally the tenant's copy and the landlord's copy, but I know several instances where the principal one is put on stamped paper and the tenant remains satisfied with a mere copy. Mr. *Peter Rodger*. 7 March 1837.

4528. Is the copy signed?—No.

4529. Can you state any particular instances which come within your knowledge that the tenant does not hold a signed copy of the lease?—Yes, the tenants of the town of Selkirk.

4530. Not signed?—No.

4531. *Chairman.*] Was that lease produced in the Sheriff's Court when the parties were enrolled?—Yes.

4532. Who produced it?—It would be produced either by Mr. Horne or me.

4533. Cannot you state whether you or Mr. Horne had possession of it?—I say I have not possession of the principal; the Committee shall have my copy, if they wish it.

4534. Was it the original lease that was produced in the Sheriff's Court?—The only lease that has ever been.

4535. Have you James Simpson's disposition of a life-rent to his brother?—Yes.

4536. Have you possession of the assignation from Grieve to his son, part of his farm at Henwoodie?—No.

4537. Who has that?—I think the Duke's agent has it.

4538. Did not you make out that disposition?—No, I did not.

4539. Can you tell who has it?—I should say the Duke of Buccleuch's agent.

4540. You have got your own disposition from your father to you?—Yes.

4541. Have you James Kemp's disposition?—I think I have.

4542. Will you produce the disposition and minute of sale, with regard to the farm of Batts; the minute of sale and lease regarding the inn at Selkirk, your own disposition from your father, James Kemp's disposition, and the disposition from Simpson to his brother?—I will do so, if it is wished.

4543. Have you George Scott's disposition?—I think I have.

4544. Have you Matheson's?—Yes.

Mercurii, 8° *die Martii*, 1837.

MEMBERS PRESENT.

Mr. Divett.	The Lord Advocate.
Sir Hugh Campbell.	Viscount Stormont.
Mr. W. Campbell.	Mr. Buller.
Sir William Rae.	Mr. Dunlop.
Mr. Fox Maule.	

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. *Adam Paterson*, called in; and Examined.

4545. *Chairman.*] YOU are a writer to the signet in Edinburgh, are you not?—I am. Mr. *Adam Paterson*. 8 March 1837.

4546. Were you formerly in the office of Messrs. Curle & Erskine, writers, at Melrose?—Yes.

4547. Did you serve your apprenticeship there?—Not a regular apprenticeship, I was three years with them.

4548. From them did you go to Edinburgh?—Yes.

4549. In whose office were you there?—I served an apprenticeship in the office of Messrs. Tod & Romanes.

4550. They are persons in very extensive practice in Edinburgh?—Yes.

4551. In that office you had occasion to have a good deal of business connected with the county of Selkirk, had you not?—Yes.

4552. How long did you remain with them?—About 13 years.

4553. Till what year?—Till the year 1833.

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4554. Did you act as political agent of the county of Selkirk, while you were in their employment?—To a certain extent, in Roxburgh and Selkirk.

4555. While in their office, had you an opportunity of acquiring an extensive knowledge of transactions in business regarding Scotch holdings of property and securities?—Yes.

4556. Will you state the various modes in which those transactions have been conducted; there are two modes of doing it, by public and private sale?—Yes.

4557. Where it is done by private sale, what is the general course?—The seller's agent advertises the property to be sold, perhaps at a distance of two or three months; he prepares conditions of sale, and sells it by private bargain; the parties exchange missives, and at some distance of time the disposition is prepared by the agent for the seller, and revised by the agent for the purchaser.

4558. It is at some distance of time, you say?—Yes; they require time to search the registers to guard against burdens, and adjust other little matters connected with the estate.

4559. What are the registers which have to be searched upon those occasions?—The registers of seisins, inhibitions, and adjudications.

4560. Is this search absolutely essential?—Certainly, to the safety of the purchaser.

4561. It is generally considered so?—Yes, it is.

4562. Is it so essential that the seller generally pays for the expense of it?—Yes, the searches are considered part of the title.

4563. They are included in the expenses which are paid by the seller?—The seller always pays that part of the expense.

4564. Is it a common occurrence for the same agent to act for both parties in a transaction of this nature?—It is very unusual.

4565. Are there any particular terms at which the money is usually paid on those occasions?—There are two great money terms in Scotland; Martinmas, or the 11th of November; and Whitsunday, or the 15th of May; sometimes also transactions are settled at Candlemas and Lammas.

4566. Is the right of the purchaser usually arranged with reference to those terms?—Generally.

4567. Is infeftment considered essential in all cases of sale of this nature?—In all cases where the purchaser cannot trust to the responsibility of the seller, he passes infeftment to secure himself against creditors, or a second sale.

4568. What is the usual expense of infeftment?—From 5*l.* to 10*l.* in ordinary cases.

4569. In the case of a public sale is there any variation from this practice?—The property is exposed to sale by public auction, and the party who offers the largest sum is preferred, and a minute of preference written upon the articles of roup, which forms his right, and makes a contract of sale.

4570. Those are the two modes by which property is usually acquired in the Scotch law?—Yes.

4571. Will you explain to the Committee the nature of bonds of security over property?—The most common mode is by bond and disposition in security; this writ consists of, first, a personal obligation by the granter for the money, with a clause authorising diligence, or imprisonment if not paid within six days after a charge or notice of payment, on what are called letters of horning, issuing under the signet; if not paid, the party obtains what are called letters of caption, and may imprison the debtor; that is the first part of the bond and disposition of security; the second part of the deed consists of a conveyance of lands in security for the debt, with a power of sale given to the creditor to sell the subjects, in case payment of the debt is not made within, say three months, after a demand has been made by him.

4572. Is it necessary, in a case where a person takes an heritable security over a property, that he should be infeft upon it?—Certainly.

4573. Is it necessary also that the person who gives the security should be previously infeft?—Undoubtedly.

4574. Who pays the expenses usually of those two infeftments?—The party borrowing.

4575. In a case where an heritable bond is given, how many dispositions are there?—Supposing the seller's own title to be complete, there is simply a bond and disposition in security and a seisin upon it.

4576. There

4576. There is first the seller's own title, with infeftment upon it, then there is the purchaser's own title and infeftment upon it, then a disposition in security, and an inefeftment also upon that?—Yes.

4577. Is the latter part of this more expensive than the former?—Certainly it is.

4578. What does that arise from?—The instruments are more lengthy.

4579. The last disposition in infeftment is of a more expensive character than the first?—Yes, there are more clauses.

4580. You spoke of the register of inhibitions; will you state to the Committee what is the nature of an inhibition?—Inhibition is a form of writ passing under the signet, which prevents or restrains the party from disposing of his heritable property or contracting debt to the prejudice of the party using the diligence.

4581. Who must be a creditor?—Yes.

4582. Is he obliged to have his inhibition entered in any particular manner?—Yes, by registering it.

4583. After that, any other party is debarred from acquiring the property, or becoming the creditor of the person inhibited, to the prejudice of the former creditor?—Yes.

4584. After that, has he any power of attaching property in any manner?—He has a power of attaching it for his debt, by what is called process of adjudication, which operates as a judicial transfer of the subject from the debtor to the creditor.

4585. You had an opportunity of knowing the various modes by which property was held in Scotland previous to 1832?—Yes.

4586. Has any change taken place in that respect since the Reform Bill?—Yes.

4587. Will you state in what particular kinds of holding the change has taken place?—In regard both to feudal subjects and leasehold subjects.

4588. What is the nature of that change which has taken place?—By joint proprietorship and joint tenancies.

4589. Previous to 1832 was the acquisition of joint properties by individuals a matter of common occurrence?—No, it was very unusual.

4590. It was usual in case of partnerships?—Certainly, the partners often acquired a subject, for the purpose of carrying on their trade, in which they were co-proprietors.

4591. Were there any other cases in which it was usual?—There were the cases of succession by heiresses, who became joint proprietors by the law, by succeeding to their ancestors.

4592. Were cases of joint purchases common previous to the Reform Bill?—No.

4593. Were they very unusual?—Very; they are discouraged by the law of Scotland, which allows any one of the joint proprietors to pursue a division or sale of the common subject.

4594. The law therefore attaches disadvantage to the holding of joint properties?—Yes.

4595. You conceive that the holding of joint properties was discouraged by the law?—Yes.

4596. Sir *William Rae.*] Do you apply that to commonties?—No, to property generally, held by several owners.

4597. *Chairman.*] Did you ever know an instance of a joint purchase having been made by a number of individuals who were unconnected with one another, previous to the Reform Bill?—I have heard of tontines, or county inns, one or two; in that case the title was taken to trustees for behoof of those who raised the money by subscription.

4598. The title was not taken to the individual purchasers themselves, but to trustees nominated for their behoof?—Yes.

4599. What was the nature of the change in respect to joint tenancies which occurred?—Joint tenancies have become much more frequent; a father often now assumes his son or nephew into the lease, which was not common before, though it did sometimes occur.

4600. Was the number of joint tenants in the county, in proportion to the tenants, very small before the Reform Bill?—Very small indeed.

4601. Did you know an instance before the Reform Bill, where any but a very near relation was assumed into a lease?—I know no instances of strangers.

4602. The assuming at all, you state to be a very uncommon thing?—Yes.

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4603. When you say assuming into the lease, do you mean during the current lease?—I refer to the original lease; I never knew an instance of assumption, I never saw it; I dare say there may have been instances, but I do not recollect any; it is very unusual.

4604. Any case of assuming a son into an original lease was rare, at a period before the Reform Bill?—It was not usual.

4605. Has it become frequent of late?—Yes.

4606. Have you reason to think that those persons who are assumed as sons and relations, are really joint tenants, or have you any reason to think they are merely nominally so?—I think, generally they are merely nominally so; that they have no right to the stock, nor to any of the profits, but are dependent upon their parents.

4607. Is that a mere vague surmise of yours, or have you any good grounds for stating that?—In one or two instances, where the matter has been probed, it has turned out to be so.

4608. Have you, where a case comes before the Sheriff's Court, and you suspect that it is a mere case of nominal joint tenancy, the means of proving whether or not your suspicions are well founded?—Not adequate means.

4609. Have you ever discovered that your suspicions were well founded where you had reason for the suspicion?—I consider that I have.

4610. State any instance in which a person who was inrolled as joint tenant you have had reason to know was not so?—For example, Mr. Aitcheson, tenant in Linhope, inrolled two of his sons as joint tenants in Selkirkshire in the year 1834.

4611. Whose tenant was he?—I think the Duke of Buccleuch's; he has died since, and I have an extract of his settlement; they were inrolled each to the extent of one-seventh upon the lease.

4612. On what farms?—On Shooting Lees and Wester Mount Berringer.

4613. Does that settlement bear any thing that shows you that those persons were not really joint tenants?—I conclude that they were not, from the terms of the instrument.

4614. Will you state what were the terms of the instrument?—Old Mr. Aitcheson conveys to trustees, "my tacks of the following farms," including the farm in question, with "the whole stock, crop and implements," and so forth.

4615. He conveyed away to trustees the lease and the stock upon this farm on which his sons were inrolled with him as joint tenants?—Yes, and this settlement is lately put upon record; the two sons who were inrolled are trustees under it.

4616. If they had been really joint tenants with him, would their interest upon that farm have been affected by his death?—No, to the extent of two-sevenths it would not.

4617. Is that a copy of the settlement?—It is an official extract, taken from the register by the proper officer in the Court of Session.

4618. Does that prove to you that your suspicions regarding the two Aitchesons being merely nominal tenants, and not real tenants, were well founded?—I can put no other construction upon it.

4619. Do you think that if the same accident were to occur in the case of some of the other tenants, you would make the same discovery as to their interest in other farms?—I do think so.

4620. Does that lead you to believe, that those tenancies generally are merely nominal and not real tenancies?—It does.

4621. Is there any other holding of property in which there has been a change since the Reform Bill?—Yes, in relation to life-rents.

4622. Will you state what change has taken place in that respect?—At the passing of the Reform Bill the life-rents of the nature of those which have since been granted were very uncommon, so much so, that there was not a single life-renter inrolled in the county of Selkirk, in the year 1832, except by virtue of some office or marriage; since that a great many have been inrolled by virtue of grants.

4623. The modes by which life-rents could be created formerly were very limited, were they not?—Yes.

4624. What were the modes by which they were created formerly?—By marriage, marriage settlement, and by office.

4625. In some instances, were they created by reservation?—Yes, in some instances by reservation; but I am speaking to the practice, for the law remains unaltered.

4626. Those were the modes by which life-rents on property were held previous to the passing of the Reform Bill?—Yes.

4627. How

4627. How are they held now?—They are held by grant, by what we call in Scotland singular title.

4628. By conveying the life-rent to the individual?—Yes, and reserving the fee.

4629. Was that quite unknown previous to the passing of the Reform Bill?—It was almost unknown.

4630. Did you ever know an instance of it previous to the passing of the Reform Bill?—Never, unless under the old parchment system of life-rent votes.

4631. Was that the only exception you know to the life-rent system of votes in Scotland?—Yes.

4632. Did you ever see any style or form for the creation of life-rents in the way those are conveyed?—No, I do not think I have.

4633. Are life-rents created now by grant solely to individuals, or is there any additional variation?—They are by grant to several individuals, which constitutes joint life-rents.

4634. Were joint life-rents known previous to the passing of the Reform Bill?—Quite unknown.

4635. Are you well acquainted with the counties of Roxburgh and Selkirk?—Yes.

4636. Are you well acquainted with the value of lands in those counties?—Yes.

4637. What should you say was the average price of land in the neighbourhood of Selkirk?—Previous to the political struggle which has been going on since the passing of the Reform Bill, I should say the average selling price was from 25 to 30 years' purchase; there might be exceptions, from locality.

4638. Since that, has a change taken place?—Yes.

4639. The value of land has risen since that period?—Yes.

4640. Sir *William Rae.*] To what extent?—From five to ten years' purchase.

4641. Has that rise been gradual?—Yes.

4642. Viscount *Stormont.*] Do you mean that it reaches to 40 years' purchase in any instance?—No, I do not think it has gone so high as that.

4643. *Chairman.*] What should you say was now about the value of land in the counties of Selkirk and Roxburgh?—In Selkirk, I should say, 35 years' purchase.

4644. Does it vary with the size of the property?—It does; it is higher in smaller properties.

4645. Were you employed in the registration of 1832, in the county of Selkirk?—To a certain extent; I prepared a number of the claims for the liberal party.

4646. Did you act for the liberal candidates upon that occasion?—In preparing the claims I did.

4647. Did you also act in the county of Roxburgh that year?—Yes, I took charge for Captain Elliott.

4648. Are you still in the office of Messrs. Tod & Romanes?—No, I left them in 1833.

4649. You are now a writer to the signet on your own account?—Yes.

4650. Since that have you been employed as political agent in the county on your own account?—Yes, in Selkirkshire.

4651. In 1832 what were the number that voted for the respective candidates?—I have not the numbers before me.

4652. Do you recollect what was the majority?—The majority was nine.

4653. Did you go particularly over the roll of voters upon that occasion?—No.

4654. Did you go over it particularly in 1835?—I did, most particularly, in 1835.

4655. What was your object for going particularly over it in 1835?—To show that Mr. Pringle, of Clifton, had been defeated by the new votes, and to show that it was necessary to resort to the same system.

4656. By what majority was he then defeated?—By a majority of 31.

4657. Upon that occasion you compared the roll of the voters at each election, to show that Mr. Pringle had been defeated by the new voters?—Yes.

4658. What were the differences you found in the votes upon those occasions?—In

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—In the district of Galashiels, where I attended the poll, there was not a single change in polling on either side.

4659. Did all that voted in 1832 vote in the same manner in 1835?—Yes, there were two of Mr. Pringle's (of Whitebank) voters who had been absent in England in 1832, and two resident voters in Galashiels voted for Mr. Pringle, of Clifton; so that if you compare the two, there was just a majority of one in Galashiels; the majority of 25 in favour of Mr. Pringle, of Clifton, was exactly one more than it had been upon the previous occasion in 1832; in the district of Selkirk again, Mr. Pringle, of Whitebank, polled of the constituency of 1832 82, and new voters 90.

4660. How did the old voters vote in the district of Selkirk?—They all voted in the same way they had done, with the exception of two, one on each side, who neutralized each other.

4661. In the district of Galashiels, they all voted as they had done previously, with the exception of two, who had not voted?—Yes; then of the new votes in the district of Selkirk, Mr. Pringle, of Whitebank, polled 82 of his former supporters, and 90 of those registered subsequently to 1832; Mr. Pringle, of Clifton, had polled at the previous election 82 in that district; of those 82, 23 had been disfranchised; 6 did not vote, and 2 neutrals voted for him, so that that would be 27; so that there were 55 of the old roll voted for him, and 55 new voters, making 110.

4662. Viscount *Stormont.*] Will you give the same account as to Mr. Pringle, of Whitebank?—Of the former constituency who had voted for Mr. Pringle, of Whitebank, in 1832, there were 103 in this district; 13 of those were disfranchised, 12 did not vote, making 25; and 4, who were either absent or neutral at the last election, voted at the election of 1835, making of the old constituency 82 who voted in 1835, and 90 new voters.

4663. Have the goodness to give the same statement as to Galashiels?—At the election of 1832, the statement of the poll for the district of Galashiels was as follows: for Mr. Pringle, of Clifton, 51; Mr. Pringle, of Whitebank, 21.

4664. *Chairman.*] Did all those who voted upon that occasion, and who were still upon the roll in 1835, vote in the same way as they had before done?—Every one.

4665. You stated that a change then had taken place in the persons who voted in 1832 and 1835?—Yes, in Galashiels.

4666. What change took place in the district of Selkirk upon the old roll?—There was a change of seven in Mr. Pringle's (of Whitebank) favour.

4667. Was Mr. Pringle's (of Clifton) majority upon the old roll reduced by this?—Yes.

4668. Did that lead you to the result, when you inquired into it, that it was by the creation of votes subsequent to the former election, this change had been brought about?—Yes.

4669. What was the character of the new voters generally who had been added since 1832?—There were a great number of advocates and writers to the signet among the number.

4670. Resident in Edinburgh?—Yes, and having no natural connexion with the county.

4671. Can you state how many?—I should say from 25 to 30.

4672. Can you state the number correctly?—Twenty-six advocates, writers to the signet, and writers; but not all resident in Edinburgh.

4673. What was the number of persons who had been admitted upon the roll between 1832 and 1835 who were not resident in the county?—Fifty-five on the side of Mr. Pringle, of Whitebank, 55 out of 90 in that district above (Selkirk).

4674. Previous to the election of 1835, had you any discussions on the subject of life-rent votes with any of your party in Selkirkshire?—We talked of the Abbotsford life-rents.

4675. Previous to the election of 1835, had you any conversation regarding the probable result, and also regarding life-rent votes created by any of your own party?—I recollect dining at Mr. Pringle's, of Clifton, the night of the day before the election, and we talked of the way in which the county had been lost by Mr. Pringle, or it was expected it would be lost, in consequence of the great number of new votes that had been made.

4676. Any particular kind of votes?—Principally by joint proprietorships; the life-rent system had not then been introduced.

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4677. Had you a good deal of conversation upon that subject?—Yes.

4678. What was the result of that conversation?—Mr. Pringle was advised to assent to the same system of vote-making in the county.

4679. Was he advised by you to do so?—Yes, I concurred in recommending it to him.

4680. Did he form any determination to do so?—I think he did.

4681. Did he express any thing as to the propriety of his doing so?—He disapproved of it; but I think he was led to believe that it was the only way of restoring the balance upon the resident constituency.

4682. From that conversation did you understand that he might resort to the same means?—I understood he was ready to do so.

4683. After the election had you any further conversation on the same subject with any agents or legal persons of the party?—I had frequent conversations with Mr. Andrew Murray, junior, advocate, who was counsel in the registration for Mr. Pringle, and was also counsel in Roxburghshire for Captain Elliott, and he mentioned to me that the Roxburghshire committee for Captain Elliott had resolved to make votes in self defence, and had made a regular minute to that effect.

4684. Had they done so recently?—Yes, between November 1834 and January 1835.

4685. Did he show you that minute?—Yes; I was asked to be one of the committee, but was engaged in Selkirkshire.

4686. Was Mr. Haldane present at this conversation?—Not when he showed me those resolutions.

4687. Was he present when it was conversed on?—Yes, he was present when Mr. Murray and I talked over the matter.

4688. Was your conversation as to the expediency of creating life-rent votes?—Yes.

4689. Did you concur in thinking it expedient?—Yes.

4690. Did you determine to do so?—Yes.

4691. Was it subsequent to that that Mr. Pringle made some life-rents upon the property of Viewfield?—Yes, he purchased that property subsequently to that.

4692. And made life-rent votes upon it?—Yes, by the advice of his agents and counsel.

4693. Was that purchased with the view to making life-rent votes?—I believe with a view of making votes.

4694. Were you one of the agents who advised him to put life-rent votes upon it?—Yes.

4695. How did you proceed?—I saw Mr. Murray's notes, in relation to the Abbotsford life-rents, which had been received the previous year, and taking them as a model, I proceeded to make life-rents in the same way on Viewfield.

4696. Abbotsford is in the county of Roxburgh?—Yes.

4697. Those votes had been made by the tory party, in the previous year?—Yes, they had, in the year 1833.

4698. Did you calculate the tables of annuity yourself?—No, I employed the secretary of an insurance company, of which I am a director, to make the calculations.

4699. You were the agent employed for this purpose by Mr. Pringle?—Yes, I referred to the calculations of the Abbotsford life-rents in that case also.

4700. How many individuals were put on Viewfield?—Eight.

4701. Did you procure the consent of those gentlemen?—I did.

4702. Did you go to Edinburgh for that purpose?—I was resident in Edinburgh.

4703. Did you go from Selkirkshire to Edinburgh for the purpose?—I returned to Edinburgh after the election, to attend to my own business, and I procured their names there.

4704. Did you find them all ready to go into this system of making those votes?—No, they objected, on the ground that they had no connexion with the county, and that it was not right to interfere.

4705. Did they state any particular reasons why they felt that?—I think, among one of the first I applied to, was Mr. John Whiteford Mackenzie, writer to the signet; he felt an objection to it.

4706. Did you overcome his scruples?—I did, by representing how many of his professional brethren we had had voting against us at the late election, who were enrolled as joint proprietors.

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4707. Is he now enrolled upon that property?—He is.

4708. Do you remember any other persons with whom you had a discussion upon the propriety of making votes?—I think most of them were averse to it, but were persuaded by the strong representations I made of the necessity of protecting the county by making stranger votes on our side, as had been done on the other side.

4709. Did Mr. Mackenzie make any particular stipulation as to how he was to vote?—I recollect the two Lothians particularly stipulating that as they knew nothing about Mr. Pringle they would be at perfect liberty to vote as they saw fit, and so did the others; the Lothians were so particular they wrote me upon the subject, stating that they were to be under no engagement to support any party, but they were liberal men in their politics.

4710. Though they did not give you a pledge, you felt pretty confident they would vote with you?—Yes, I suppose so, unless it was upon the church question, or some particular question that they might split off on.

4711. You would not have asked them unless you had conceived they would vote with you?—Certainly not.

4712. Do you recollect also some votes being made upon the property at Fairnilie?—Yes.

4713. Was this about the same time as the former had taken place?—A day or two after.

4714. It was all in consequence of this resolution you came to with Mr. Haldane and Mr. Murray?—Yes.

4715. Did you act as agent in making out the conveyances in that case?—No, I did not act as agent in preparing the conveyance.

4716. Did you get Mr. Pringle's consent on that occasion?—I did not.

4717. Who did?—A person of the name of Wilson, Bailie Wilson; Walter Wilson, from Hawick, came to Edinburgh to make votes, as I understood, in pursuance of the resolution in Roxburgh.

4718. Did Bailie Wilson get his consent?—I believe he did, from a letter I received from Mr. Haldane upon the subject; Mr. Haldane wrote me that Mr. Wilson had been over to Haining, Mr. Pringle's residence, and had got Mr. Pringle's consent to make the votes; neither Mr. Pringle nor Mr. Haldane had proposed making votes over Fairnilie, and it was entirely owing to Bailie Walter Wilson they made those votes.

4719. In that letter Mr. Haldane told you that Mr. Wilson had been over to Mr. Pringle's residence, and had got his consent to make the votes?—Yes, his words were, that he had had a long conversation with Mr. Pringle in regard to life-rents in the county, which terminated in his, Mr. Pringle's, agreeing to give 10 over Fairnilie.

4720. In consequence of that, did you find the gentlemen to take those ten votes?—Bailie Wilson and I got four gentlemen in Edinburgh, and Bailie Wilson got six in Hawick.

4721. Did you make those calculations?—I obtained the calculations.

4722. Do you know whether the money was paid by the life-renters?—I know that the 12 gentlemen in Edinburgh paid the money either directly to me or to Mr. Haldane, in my presence.

4723. Have you paid it since?—Yes, I have paid it.

4724. There were some cases of exchanged life-rent in the county of Selkirk after that?—I did not manage those.

4725. Were you employed by Mr. Haldane to calculate the respective prices according to the ages of the parties?—Yes, and I did that.

4726. Do you know the property of Redford Green?—Yes.

4727. Do you know the case of a number of life-renters being enrolled upon that property?—Yes.

4728. Who was the proprietor of it formerly?—A Mr. Rutherford.

4729. Into whose hands did it pass from his?—It was sold by his brother-in-law and commissioner Mr. Andrew Dunn, writer to the signet, to Mr. Robert Haig, distiller, at Lochrin.

4730. There were 41 life-rents created upon it?—Yes, there were.

4731. Did Mr. Haig make this purchase for a political object?—I presume so.

4732. Did he conduct the transaction himself?—No.

4733. Who conducted it for him?—Mr. Andrew Clason, writer to the signet.

4734. Is he Mr. Haig's ordinary agent?—No.

4735. Who

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4735. Who is?—Messrs. Gibson, Craigs, Wardlaw & Dalziel.

4736. What are Mr. Haig's politics?—He is a very decided tory.

4737. What is Mr. Dunn?—Mr. Dunn is a very decided liberal.

4738. What is Mr. Clason?—He is reputed a whig.

4739. Do you mean by that that he is not a very decided one?—Not a decided one, I should say.

4740. Is he a great friend of Mr. Haig's?—Yes, and a number of the tory party.

4741. Was there any particular reason for Mr. Haig employing a person not his usual agent to make this purchase for him?—No doubt he did it to conceal the object for which the purchase was made.

4742. Did Mr. Haig get a disposition to himself of the property?—No, the contract of sale was in his name.

4743. Did he convey that contract of sale to any other person?—He conveyed it to Mr. Alexander Keith Pringle, brother to the Member for Selkirkshire.

4744. What took place then?—A dispute ensued as to the title and other matters; the parties entered into a reference or a submission; during the discussion Mr. Keith Pringle conveyed the contract of sale to his brother, the Member.

4745. Did his brother convey the property to 41 life-renters?—Yes, in the end of January 1836.

4746. What was the price paid for the property?—Thirteen thousand pounds.

4747. Was it all paid down?—No.

4748. Do you know how much was paid?—It appeared by the conveyance from Mr. Keith Pringle to Mr. Alexander Pringle, that he, Mr. Keith Pringle, had advanced part of the price, amounting to some thousands of pounds, but I cannot say the precise sum.

4749. Was the rest unpaid?—Yes; and there was also a life-rent annuity of 150*l.* over the property, which remained undischarged at the time of the registration, and I believe it is still undischarged.

4750. What was the date of the disposition to the life-renters?—I think the 29th or 30th of January.

4751. What was the date of the disposition Mr. Pringle acquired himself?—He did not obtain his conveyance until the 22d of February 1836.

4752. You stated that there was a submission in consequence of some dispute about the terms of the purchase; was that submission terminated at the time he signed that conveyance to the life-renters?—I think it was still in dependence.

4753. What was the rental of that property?—The land-rent was 440*l.*, the rent of the game 15*l.*

4754. That was at the time of the purchase?—Yes.

4755. What were the public burthens on the property?—Averaging about 60*l.* a year.

4756. Deducting the public burthens, the annual value of the property was 395*l.*?—Yes.

4757. The value of the game was 15*l.* a year?—It had been let at 12*l.* and latterly at 15*l.* a year.

4758. How do you know that?—I saw one of the missives to the tenant, and I know the tenant personally, who told me the rent, and besides that, he swore to it in the Registration Court.

4759. That was a missive from year to year?—Yes.

4760. Did any change take place in the letting of it after the time of the purchase?—Yes.

4761. What change took place?—At the Registration Court there was a lease for 19 years, entered into the day before the life-rent dispositions were granted between the Duke of Buccleuch and Mr. Pringle, of Whitebank, the rent being 30*l.* a year.

4762. That lease was dated the day before the deeds from Mr. Pringle to the life-renters?—Yes.

4763. This would raise the clear produce of the property from 395*l.* to 410*l.* a year?—Yes.

4764. Is that a usual time of the year for letting game, the month of December or January?—No.

4765. Is it very unusual?—Yes.

4766. You stated that there was an annuity of 150*l.* a year, also a burthen on the property by the condition of sale; was this annuity to remain a burthen, or was

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the seller bound to relieve the property of it?—The seller was bound to disincumber the property.

4767. So that the property would come to the person who purchased it free of that annuity?—Yes.

4768. Do you know a case of an estate upon which Sir John Pringle made some life-rents in that year?—Yes, Newhalls; he made four life-rent votes upon that.

4769. Have you reason to know or form a strong opinion whether those votes were nominal or whether they were real qualifications?—From the property being incumbered with debt, I should say that the purchasers of the life-rents will not have paid the prices for them.

4770. Do you know that the property is incumbered with debt?—I do.

4771. How do you know that?—I have seen the incumbrances upon the record.

4772. Is it incumbered to pretty nearly its full value?—I think so.

4773. Who were the parties to whom he gave the right?—To his two agents, Messrs. Nairne, his brother, Mr. Norman Pringle, and, I think, a son of his own.

4774. You stated that a great change has taken place in the manner in which property is held in Selkirkshire since the Reform Bill, and that rights are acquired in a manner unusual and unknown before; do you think that practice is much on the increase?—I think so, very much so.

4775. Do you know any particular instance of any property which has been converted to political purposes, which shows that, to a greater extent than the Committee have yet heard?—Yes, the case of Dalgleishes.

4776. State what you know of that property?—That property belonged to a Mr. Beattie; it was burthened to the full extent of its value; there were, besides, inhibitions standing on the record against him, for other debts, apart from the heritable debts, which heritable debts amounted to 15,000*l.*

4777. Do you know when Mr. Beattie acquired this property?—In 1833.

4778. Do you know the price he paid for it?—It was either 11,500*l.* or 13,500*l.*, I cannot recollect which.

4779. You are certain it was between those two sums?—I am certain it was one or the other of those two sums.

4780. What burthens were upon it?—There were two heritable debts, amounting to 15,000*l.*; the first in favour of the Royal Bank for 11,000*l.*, and the second is in favour of the late Lawrence Tweedie, of Oliver, for 4,000*l.*, and both the sasines were recorded at the same time with Mr. Beattie's own sasine when he acquired the lands.

4781. It is from that record you give the Committee that information?—Yes; I have an exact copy of the record; besides that, there were the debts for which the inhibitions were issued.

4782. What was the amount of the debts on which the inhibitions were issued?—I understood they amounted to several thousand pounds; so I was told by the heir of Mr. Tweedie, of Oliver, who was the principal creditor.

4783. Do you know Mr. Beattie has been since rendered a bankrupt on those debts?—I understood he was rendered legally a bankrupt, according to the laws of Scotland; I, myself, sent letters of diligence against him.

4784. On behalf of whom?—I forget the name of the party, but I was employed by Mr. Haldane, for a client of his.

4785. Do you know whether Mr. Beattie deforced the officers, and fled the country?—I have heard that was the case, that he deforced them and fled to England; indeed that was a matter of notoriety.

4786. Has Mr. Beattie made a disposition of this property?—He has made a sale of it.

4787. To whom?—To Mr. John Alexander Pringle, the brother of the Member for Selkirk.

4788. Have you seen that contract of sale?—I have.

4789. Is that it you hold in your hand?—This is an official extract.

4790. Was any price paid by Mr. Pringle for that property?—Not at the date of the contract; the price was not payable till the 1st of March.

4791. What was the date of the sale?—The 21st and 23d of January the contract is dated.

4792. For what price?—Sixteen thousand two hundred and fifty pounds.

4793. Where

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4793. Where was it subscribed?—By Beattie, at Newcastle, and by Mr. John Alexander Pringle at Edinburgh, before two of Mr. Horne's clerks.

4794. Did they act as witnesses?—Yes.

4795. Who drew out the deed?—It is written by a clerk to a solicitor in Newcastle, but it is prepared in the Scotch form, I presume, by Mr. Horne.

4796. You state that the purchase-money was to be paid the 1st of March?—Yes, and the deed gives power to the purchaser to retain it, in the event of the property not being disincumbered, or to apply it in disincumbering the property.

4797. By that deed the purchaser is not bound to pay the price of the subject until it is disincumbered by the seller?—Certainly not.

4798. Is the property incumbered, in your opinion, beyond its real value?—I have no doubt that the incumbrances are greater than the price.

4799. Then its being disincumbered by the seller is a very unlikely thing to happen?—That depends upon the value of the property.

4800. Is it likely to be disincumbered by the seller?—I think it very unlikely.

4801. Do you say that the debts exceed the value of the estate?—The heritable debt is 15,000 *l.*, and interest, with interest upon the 4,000 *l.*, I believe ever since the date of the bond, at least Mr. Tweedie's heir told me no part of the interest had been paid; that it is still under the price, 16,250 *l.*

4802. Three years ago Mr. Beattie bought the estate for either 11,500 *l.* or 13,500*l.*?—Yes.

4803. In fact it is very unlikely that any part of the purchase-money was ever paid to Mr. Beattie?—No part of it has been paid; the contract of sale shows this.

4804. As Mr. Beattie's debts are much greater than the value of his property, it is exceedingly unlikely that he should disincumber it?—Yes.

4805. Is that property still in the hands of Mr. Pringle, to whom it was conveyed?—No, he has made life-rent conveyances over it to 56 individuals.

4806. How do you know that?—From an official extract from the minute-book of the register of sasines, certified by the keeper.

4807. Has enfeoffment been taken upon that property by those 56 individuals?—The life-rent conveyances are dated the 28th day of January last; the whole of the life-renters were enfeoffed on the 1st of February, and their sasines recorded on the 21st of February, but it is very unlikely that they have paid any part of the price.

4808. Can you give a list of the names of the individuals?—They appear upon these extracts; they are Pulteney Mein, esq., of Forge; James Church, tenant, of Sark; James Church, jun., of the same; Alexander Hay Borthwick, tenant, of Hopsrig; Thomas Chalmer Borthwick, his son; Captain John Borthwick, of Langholm; Archibald Stavert, farmer, of Saughtrees; Andrew Stavert, farmer, of Dycrofts; Robert Laing, jun., farmer, of Campend; William Plummer, sen., flesher, in Dalkeith; Alexander Wilson, ironmonger, Dalkeith; William White, manufacturer, Dalkeith; John Bertram, farmer, at Lawfield; James Bertram, farmer, at Smeaton; John Thomson, farmer, at Western Cowden; John Donaldson, writer, Edinburgh; Alexander Waugh, tenant, Laretburn; James Rutherford, tenant, Fens; George Robison, tenant, at Brotherstone; George Dunlop, tenant, at Bucheicot; Thomas Frier, tenant, at Farrs; Samuel Fyfe, brewer, in Melrose; Peter Young, surgeon, in Saint Boswells; James Simson, writer, in Melrose; Thomas M'Millan Scott, jun., of Wauchope; Robert Boston, tenant, in Langshaw; Robert Ker, of Craighouse; Alexander Crauford, writer, in Lauder; George Simson, residing in Lauder; Walter Tod, residing at Langhope; William Young, residing in Selkirk; William Thomson, residing in Gatehousecote; George Roberton, farmer, at Harpertown; Robert Roberton, residing at Kelso; William Boog, farmer, at Sweethope; Alexander Elliot, residing in Kelso; Walter Elliot, architect, Kelso; John Elliot, banker, Jedburgh; James Curry, innkeeper, Cornhill; Thomas Potts, writer, Edinburgh; Colonel James Lindsay, of Balcarras; Robert Lindsay, residing at Aberdour House; James Clerk, eldest son, and John Clerk, third son of Sir George Clerk, Bart., of Pennycuick; David Milne, the younger, of Milne Graden, advocate; William Pitt Dundas, advocate, Edinburgh; Mark Napier, advocate, Edinburgh; Robert Blackwood, bookseller, Edinburgh; Alexander Blackwood, bookseller, Edinburgh; Peter Tait, bookseller, Edinburgh; John Guthrie Tait, bookseller, Edinburgh; Archibald Stewart, doctor of medicine, Edinburgh; Captain Walter Scott, of the Honourable East India Company's service, Edinburgh; William Alexander Forrester, writer, Edinburgh; James Jackson Smith, Edinburgh; and John Primrose Bertram, writer, Edinburgh.

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4809. A great number appear to be non-residents?—The great majority are non-residents.

4810. Who is now tenant upon the farm?—By the contract of sale it is stipulated that the purchaser shall confirm the lease granted by the seller, Beattie, in favour of his own daughter.

4811. Was that lease granted long prior to the sale?—It is stated in the contract of sale to be dated in November 1835.

4812. Has his daughter remained undisputed tenant of that property since?—No, I understand the heritable creditor, Tweedie, of Oliver, raised a reduction of the lease.

4813. You stated that this practice of purchasing properties for political purposes is very much on the increase?—This last, I think, is an instance of that.

4814. Can you state, from your own practical knowledge, that it is possible to create votes for political purposes to a very great extent without persons acquiring any real interest or title to the qualifications on which they vote?—Yes.

4815. That cannot have been in the contemplation of the Reform Bill, can it?—I should think not.

4816. Is there any thing particular which facilitates that, either in the practice of the Registration Courts or otherwise?—Yes, I think the mode of taking evidence in the original courts, and again in the Appeal Courts, is objectionable.

4817. Do you think it facilitates the enrolling of unreal qualifications?—I think it does.

4818. How does it do so?—As nothing is taken down in writing in the original court, it allows the party to alter his statement in the Appeal Court; in short, to amend his statement.

4819. The same witness who is examined in the original court may be examined in the Appeal Court?—Yes, and alter his evidence.

4820. After he has given his evidence in the original court, does he remain and hear the other witnesses who speak upon the same subject?—He very often does.

4821. Then, in case his vote is rejected, has he an opportunity of seeing in what particular point the evidence to establish it was deficient?—Yes.

4822. Has he an opportunity of being again examined in the Appeal Court and correcting his evidence?—Yes.

4823. Have you known instances of that being done?—It is difficult to point out instances, because I cannot recollect the exact tendency of the evidence, but I am sure I felt at the time satisfied that that was the case, that the parties have given different evidence.

4824. Have you known cases where a party's claim has been rejected on one line of evidence in one court, and different evidence has been given and his vote confirmed in the other?—Yes; with respect to the instances, I could not enter into detail.

4825. Is there any thing to prevent that being done constantly?—Nothing.

4826. Is there any thing else in the practice of those courts which you think encourages that?—I consider the expense to be a great drawback, a very serious matter; it throws the claimants invariably into the hands of one political party or another, as they cannot afford to be at the expense of supporting their own claims of enrolment, and that excites a partisanship.

4827. Is the expense of a person defending a vote, if it is a good one, considerable?—Very considerable.

4828. Is the expense of resisting a vote of the other party considerable?—Very considerable.

4829. Have you had an opportunity of obtaining experience upon that subject?—Yes.

4830. What is the expense per head of the votes that come on at the Registration Court?—Taking both sides of the question, I should say fully from 5*l.* to 10*l.* for putting on each claimant, and that includes the unobjected cases; excluding them, the expense, I should say, would be from 10*l.* to 20*l.* on the objected cases.

4831. In what does the great expense consist?—The expense of bringing witnesses and counsel and agents, first to the original court, and afterwards to the Court of Appeal.

4832. Where is the Court of Appeal held in Selkirkshire?—At Jedburgh.

4833. What distance have witnesses to come?—The upper part of Selkirkshire is full 30 miles off.

4834. Are they detained in Jedburgh any time?—They are often detained for a week.

4835. Do you think that persons, from the expenses of this Registration Court, who are not rich, may be deterred from contesting their claims, unless they choose to put it into the hands of one candidate or another?—I think so; there are very few instances of any party claiming, except where there are agents employed on one side or another.

4836. Do you think this great expense gives any wealthy person who chooses to put on a number of fictitious claims a facility to do so?—Yes.

4837. And that it deters persons from resisting the putting on those votes?—I think it does.

4838. Sir *Hugh Campbell.*] Do not you know that at the last Appeal Court several of the sheriffs had taken down their notes which they had taken of the evidence at the first court?—That has never been done in Roxburghshire or Selkirkshire; I have heard of its being done in Berwickshire.

4839. Viscount *Stormont.*] Will you furnish a table of the number of votes which Mr. Pringle, of Clifton, polled in the year 1832, and which Mr. Pringle, of Whitebank, polled in that year, distinguishing those votes which were polled in the district of Galashiels and those polled in the district of Selkirk?—I will do so.

4840. Will you furnish a list of the number of votes of Mr. Pringle, of Clifton, in the year 1835, and Mr. Pringle, of Whitebank, in the same year, distinguishing the number who voted in each of those districts?—I will prepare that.

4841. Will you give a list of the number on the old roll who voted for each of the candidates in 1835, and the number of those who were disfranchised on each side who had formerly voted; the number of those who did not vote in 1832, but who voted in 1835?—I will do so.

4842. Are you able to state what would have been the result of the election in 1835, supposing no new votes had been put upon the roll on either side?—I think Mr. Pringle, of Clifton, would have had 100, and Mr. Pringle, of Whitebank, 104 upon the old roll.

4843. Mr. Pringle, of Whitebank, would have been returned if no new votes had been made upon either side?—According to my tables, looking to those who were dead and disfranchised; there was only a majority of nine at the previous election.

4844. Were there any votes for Mr. Pringle, of Clifton, which were registered in 1832, struck off in 1833?—I was not present in Selkirkshire at the registration of 1833; I was not agent then.

4845. You were agent in 1832?—No, in 1832 and 1834; I was absent in 1833.

4846. You know nothing of the circumstances of 1832?—No further than having prepared several of the claims on the liberal side. I did not attend the registration in Selkirkshire in 1832; I was engaged in Roxburghshire.

4847. Did you prepare the claims for John Dickinson, steward of Kippilaw?—I cannot recollect; but if it is very important, I can ascertain that.

4848. Did you prepare the claim for John Stewart, spirit-merchant, Edinburgh?—I do not think I did.

4849. Do you know any thing with regard to the claims of those individuals?—Nothing about Dickinson's; I know about Stewart's.

4850. Upon what right did Mr. John Stewart, of Edinburgh, claim in 1832?—I ascertained, at a subsequent period, that Mr. Stewart had been registered upon a conveyance to a lease of certain subjects in the town of Galashiels.

4851. What length of lease was it?—A 99 years' lease.

4852. Was it upon the security of a debt due by Adam Young and others?—The assignation was, *ex facie*, absolute; but I understood since that Mr. Stewart held it only in security.

4853. That was held to be an improper vote in 1833?—I have no knowledge of 1833.

4854. Who is your informant?—It came out in a subsequent registration in 1834 or 1835.

4855. Was he not rejected in 1833?—He was rejected, and claimed again; I did not appear to support his claim; Stewart had, between the registration of 1833 and 1834 or 1835, paid a sum of money to Adam Young, and got a letter discharging the right of redemption; but still he did not consider himself entitled to vote after that, and did not vote.

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4856. From whom did he get that sum of money?—I know nothing as to that.

4857. His claim was rejected in 1833, 1834 and 1835?—I am not aware in 1833, but latterly I know it was rejected twice; either once or twice.

4858. He was not upon the roll in 1833, was he?—I do not think he ever got upon the roll after 1832.

4859. Were there any votes of Mr. Pringle, of Whitebank, which were rejected in 1832, which were afterwards put on in either 1833 or 1834?—I think it probable; I think a brother of mine was rejected in 1832, and put on in 1833, and voted for Mr. Pringle, of Whitebank.

4860. Was there any other instance?—I do not recollect any other; it is from the circumstance of his being my brother that I recollect that.

4861. Were you at a dinner which took place in the end of the year 1832 or the beginning of 1833, which was given either to Mr. Pringle, of Clifton, or given by him to his constituents?—No, I was not.

4862. Did you ever hear at that time that the friends of Mr. Pringle, of Clifton, declared that their majority being so small, they ought to buy largely to increase it?—I never heard that.

4863. Do you know which is the first instance of any property being bought for political purposes in the county of Selkirk?—I do not know; I was not engaged in Selkirkshire till the autumn of 1834; I was engaged in 1832 from the circumstance of being in Messrs. Todd & Romanis' office, but I was principally engaged in Roxburghshire; I left their office, and had nothing more to do with Selkirkshire till the autumn of 1834.

4864. Were you present at a meeting which was held in January 1835 of advocates and writers in Edinburgh?—I do not know to what meeting allusion is made.

4865. For the purpose of taking into consideration the propriety of making more votes in those counties, which had been lost by the whig party?—I do not recollect attending any such meeting.

4866. Did you ever attend any meeting which was held for that purpose?—I cannot recollect.

4867. Of the agents and advocates of different counties who met together for the purpose of considering which was the best plan of making votes?—I never was present at any such meeting, that I can recollect.

4868. Mr. *Maule.*] Did you ever hear of such a meeting?—I do not recollect that I ever did.

4869. Viscount *Stormont.*] Did all those parties who took life-rents on Fairnilie pay the money down in cash?—I only know of the Edinburgh gentlemen; the four in Edinburgh paying their money; but Mr. Haldane was examined in the Registration Court, and stated that they had all paid excepting one; I can speak positively as to the 12 Edinburgh gentlemen paying.

4870. Have you a list of the sums which each of them paid?—Yes, I have.

4871. What was supposed to be the value of the life-rents, upon which those sums were paid?—The aggregate price of the ten life-rents over Fairnilie was 1,300 *l.* 2 *s.* 9 *d.*

4872. What was the property each acquired by his share?—Ten guineas each, making 105 *l.* in the whole.

4873. Was there nothing more at first?—Nothing more than 10 guineas by the terms of the transaction; Mr. Pringle was to receive a back lease at 105 *l.*, yielding 10 guineas to each of the life-renters.

4874. What does Mr. Pringle, of Clifton, let that property for?—It is let to the tenant for 170 *l.*

4875. Was it a condition of the life-rents that it should be let to him for 105 *l.*?—That was a part of the transaction.

4876. When was the lease granted?—Not for some time afterwards.

4877. Why not?—The life-rents were granted on one of the last days of January; there was not time to prepare the lease at the moment, and the matter stood over.

4878. When was the lease granted?—It might be two or three months after.

4879. What is the length of the lease?—During the respective lives of the grantees; it is made to him during the respective lives of the grantees.

4880. As each life falls in, does it go to the proprietor?—Yes.

4881. With

4881. With a deduction of 10 guineas from the rent?—The share of the rent belonging to that party accrues, along with the right of the fee, to the proprietor.

4882. Who draws the rents?—I believe Mr. Pringle's factor, Mr. Lang, and Mr. Pringle pays the life-renters.

4883. Does he pay any part through you?—Yes, I have made payments, at two different times, for the whole of those resident in Edinburgh I have paid.

4884. You say the two Messrs. Lothians felt great repugnance?—Mr. Whiteford M'Kenzie.

4885. Mr. Black is also a life-renter?—Yes.

4886. Do you know whether he is a life-renter in any other counties?—I do not know.

4887. You do not know that he has votes in eight or ten other counties?—I do not know it.

4888. *Chairman.*] Do you think it probable he has?—I think it is very likely; I have four myself.

4889. All acquired for the same purpose?—Yes.

4890. Viscount *Stormont.*] Have you considered this subject a great deal since it has been in agitation?—No, I cannot say that I have.

4891. Have you ever considered any remedies which you might suggest to the Committee for the purpose of putting an end to the creation of this description of votes?—No, I have been concerned in only one county since the evil has become very flagrant, and cannot judge of the remedies which may be applicable to all the others.

4892. Is that the county of Selkirk?—Yes.

4893. Have you any suggestions to offer to the Committee?—Nothing further than that I should say that it is inconsistent to give to a person holding 10*l.* in one county and 10*l.* in another two votes, while a person holding 20,000*l.* in one county has only one; but I have no suggestion to offer.

4894. Do you think it inconsistent that 10 persons should buy property worth 100 guineas and have 10 votes, when one person, who has 20,000*l.* a year has only one?—I think it is very inconsistent that they should.

4895. Do you think that property is sufficiently represented by one vote?—I think the property must be represented; and it is represented also by the tenants.

4896. To a large extent or a small extent, is it represented by the tenants?—I should say that any man having 20,000*l.* annual income, must command at least from 20 to 30 votes in any county.

4897. That is by indirect influence?—Yes.

4898. *Chairman.*] Always indirect?—No, I think it is not always indirect, because he may increase or diminish the votes upon his estate by making joint leases and so forth, and in that way he may add to his political influence.

4899. Viscount *Stormont.*] Do you conceive that the object of the Reform Bill was to give the qualifications to those who possessed property?—I conceive so, to those who had acquired property by natural means.

4900. What is your definition of natural means?—In the ordinary way, by succession or by purchase, for the party's own occupation, or on speculation; not for the mere purpose of voting.

4901. In what part of the Reform Bill do you find that?—I assume that matters were judged of as they then existed, and that the Legislature legislated according to the existing state of matters, and did not foresee the expedients to which political partisans have had recourse.

4902. Is there any other system of making votes which has been acted on now which was unknown before in Scotland?—Before the passing of the Reform Bill the nature of the franchise was quite different; there could be no voting on tenancy, and of course joint tenancy is quite a new system; there was no voting on joint life-rents under the old system; that is quite novel.

4903. There were life-rents under the old system, were there not?—Yes, but in those cases the life-renters acquired a bare superiority; they could not occupy the property, and they did not require to reside upon it, or to manage it; they had nothing but the nominal qualification.

4904. It was specially provided for by the Reform Bill, that a right should be given to life-renters?—It was; but those, I presume, were life-renters, such as existed at the passing of the Reform Bill, by office, by succession, or by marriage; not joint life-renters created to such an extent as are now put on.

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4905. Where do you find that in the Reform Bill?—I find it in the state of the country at the passing of the Reform Bill.

4906. Mr. *Maule.*] That is the construction you yourself put upon the Reform Bill?—Certainly.

4907. Sir *William Rae.*] Is it a construction you could argue upon in a court of law?—I think I could; I could maintain that Parliament legislated on the existing state of matters.

4908. Mr. *W. Campbell.*] No such life-rents existed before as are now created for political purposes?—No.

4909. Viscount *Stormont.*] Were there no life-rents but those which came by succession or by office or marriage contract?—I never knew a case of a person acquiring a property, and parting with it during his life-time; he may reserve a life-rent, and give the fee to his children, but it is very unusual to give away the life-rent or beneficial interest.

4910. Are there no instances where a party gave over to his son, during his own life, a portion of the life-rent?—There may be cases, but of course they were of rare occurrence.

4911. *Chairman.*] Do you believe there ever was such a case?—I think it not unlikely that a father may have given part of his property to his son in life-rent, and may have settled it by marriage contract or otherwise.

4912. Mr. *W. Campbell.*] Were there not paper votes existing in Scotland previous to the Reform Bill, by which a life-rent was given over different portions of the property?—Yes, but those were quite different from those now existing; there was no substantial interest in the subject; no rent.

4913. Still they were called life-rents?—Yes.

4914. Did not the Reform Bill specially set aside those for the future; was not one of the causes of complaint, at the time of passing the Reform Bill, that such abuses existed?—Certainly, but they reserved the rights of those who were upon the roll.

4915. Viscount *Stormont.*] As to those life-rents which existed previous to the passing of the Reform Bill, it was not necessary they should have any beneficial interest whatever in the property?—No, the vassal in most cases paid a mere nominal or illusory feu-duty, such as a penny Scots.

4916. Mr. *W. Campbell.*] Does that answer apply solely to the life-renters?—To the old life-rent voters.

4917. Viscount *Stormont.*] It is necessary, under the provisions of the Reform Act, that a person should have an interest to the amount of 10*l.* as a life-renter?—Yes.

4918. There is that distinction between the present and the old life-renters?—Yes.

4919. Do you consider that the *bona fides* of the transaction consists in the man having a real *bonâ fide* interest in the property?—Certainly, the *bona fides* depends upon the having a real beneficial interest, but the party may have acquired it for a political purpose.

4920. Are you of opinion, that a vote must necessarily be fictitious which is acquired for a political purpose?—Will the noble lord define what he means by the word fictitious?

4921. Do you hold it objectionable?—I hold it objectionable to purchase votes purely for a political purpose.

4922. On what ground?—I think on the ground that it interferes with the natural constituency of the county.

4923. What is the natural constituency of the county?—Those who have held or acquired property in the ordinary way, and not for a political purpose.

4924. How should you be able to distinguish between property that is bought for a political purpose, and property that is bought for any other purpose?—There are various circumstances from which you may draw that conclusion, that property has been bought for a political purpose; for example, a person may not purchase for his own occupation; he may be resident at a distance, which renders the management of it troublesome; the subject may be altogether beneath his consideration as a speculation, and for many other reasons it may be perfectly obvious that a purchase has been made for the purpose of acquiring a vote.

4925. Would you recommend the passing an enactment to state that persons who purchased property which was beneath their consideration should not have a vote?—That is a matter on which I would beg to decline giving any opinion.

4926. *Chairman.*]

4926. *Chairman.*] Have you considered this part of the subject?—I have not considered the subject maturely, therefore I cannot answer these questions.

4927. Do you consider yourself competent to give evidence upon this part of the subject?—I certainly am not, because I have not considered the subject in all its bearings and details.

4928. Sir *William Rae.*] Have you not considered the various grievances connected with the present system of registration?—I cannot say that I have considered them with a view to remedy.

4929. Viscount *Stormont.*] Did you sign the petition from Selkirkshire which has been presented to The House?—No, I did not.

4930. Sir *William Rae.*] You cannot give the Committee any light upon the remedies for the grievances you have stated?—No, I cannot.

4931. Mr. *Dunlop.*] Is it not evident that a person has purchased a vote for a political purpose when he has acquired no beneficial interest in it but the vote?—Yes, certainly.

4932. Do you not know that it is the case with many of the votes you consider objectionable?—Yes.

4933. Did you not say that a vote is an objectionable one, from which the individual obtains no advantage whatever, except the right of voting?—Yes.

4935. Sir *William Rae.*] You admit that a person may purchase a house or property worth 10*l.* a year or upwards, for a political purpose, not wrongly?—No, I do not say so; that is matter of opinion.

4935. Do you think that he can, or cannot?—My own opinion is, that it is wrong to acquire properties in that way for a political purpose.

4936. Would you prohibit by law any man acquiring a house fairly worth 10*l.* a year, because it was bought for the purpose of obtaining a qualification?—No, I do not give any opinion upon the remedy; I disapprove of the thing.

4937. Mr. *Dunlop.*] Do you not see a very great difference between an individual acquiring a vote upon property of which he becomes *bonâ fide* the possessor, and a person obtaining a vote on a life-rent in which he obtains no value?—Certainly.

4938. You do not consider those two descriptions of votes as equally objectionable?—No, there are degrees; a person may be intimately connected with the county, or he may be a total stranger.

4939. Sir *William Rae.*] You do not consider every life-rent exceptionable?—No, I consider life-rent constituted in that way, by grant, exceptionable.

4940. Do you conceive them illegal under the Reform Act, or only that they ought to be?—I consider them to be contrary to the spirit of the Reform Act.

4941. Sir *Hugh Campbell.*] How do you judge of the spirit of the Reform Act?—I judge of it from the state of the constituency at the date of the passing of the Reform Bill, and I infer from that, that it was the intention of the Legislature only to give the right to the natural constituency as it stood at the date of the Bill.

4942. Mr. *Dunlop.*] Was not a great portion of the constituency of Scotland, previous to the passing the Reform Bill, fictitious?—A great part.

4943. Did you not consider it one great object of the Reform Bill to do away with that constituency?—Certainly.

4944. Do you consider that it has effected that?—No.

4945. *Chairman.*] Do you consider that the life-rents, as at present created, are similar to those which the Reform Bill was brought in to abolish?—I do, with this exception, that if a party has actually paid the price, and not claimed any back security, he may be entitled to draw the 10*l.*; but on the other hand, it is equally competent to make votes, though the party may never draw a shilling, by granting back security.

4946. By the present practice it is possible to make a life-rent quite as fictitious and nominal as under the old system?—Yes.

4947. And to a greater extent than under the old system?—Certainly; I can undertake to create as many as I can place on the property.

4948. Viscount *Stormont.*] Do you draw a distinction between a life-rent which is obtained without paying any money whatever for it, by only giving a bond, and one which is obtained by purchase in cash?—No doubt there is a distinction; the one is a more flagrant case than the other.

4949. Sir *William Rae.*] Would you abolish all life-rents?—I decline to give an opinion upon that subject.

4950. Supposing a person bought a life-rent of a house for a certain sum, for the

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the purpose of living in it, and did live in it, would you say that man ought not to have a vote?—That is an isolated case; I could not give an opinion upon that.

4951. Can you say whether it would be just or unjust that that individual should have a vote?—I think it would be proper that he should have a vote.

4952. It must depend upon the circumstances of each particular case, whether he should have a vote or not?—No, that does not follow.

4953. *Lord Advocate.*] Did such a case ever occur of a person buying a life-rent of a house before the Reform Act?—I never heard such a case before; I have since.

4954. Do you think that the Act contemplated a case which had never previously occurred?—I think not.

4955. Was the number of votes on life-rent that could be created in the county before the Reform Act, limited by the valuation of the county?—Yes.

4956. Is there any limitation to that now, but the number of houses or lands that may now produce 10*l.* a year?—None.

4957. Sir *William Rae.*] Is it common to take enfeoffment upon those life-rents that are purchased for the mere sake of a vote?—They always do so now, in consequence of intimation being held to be necessary; it costs but little, where there are a number to be enfeoffed at the same time.

4958. *Lord Advocate.*] Is enfeoffment any guard against votes being improperly created, except in the matter of expense?—None, whatever.

4959. Sir *Hugh Campbell.*] Does not it give publicity to the transfer of property?—No; it is perhaps two months before it is done, but persons do not refer to that.

4960. Sir *William Rae.*] Would not the creditors of a person be made aware of it?—Yes, certainly; but that would not strip him of his life-rent; even in the case where creditors attached the life-rent the life-renter remains a voter, though the creditor may have the substantial interest, which makes the case more flagrant.

4961. Sir *Hugh Campbell.*] Do you think a person having a 10*l.* house has a right to his vote upon that house, if he has mortgaged his house to the full extent of its value?—That is rather a question of opinion; I should decline giving an opinion upon that.

4962. *Chairman.*] He is allowed to vote under the Reform Act?—Yes, he is.

4963. Sir *William Rae.*] You think it unreasonable, in a case of life-rent, that such life-rent should be granted, but you give no opinion upon the reasonable nature of that now stated to you?—I would think it equally objectionable to acquire a 10*l.* franchise in that way, merely for the purpose of voting upon it.

4964. But you decline to give an opinion that it is objectionable that a person should have a 10*l.* qualification upon a property, notwithstanding the same is burthened with a debt equal to its value?—I think the cases of life-rent and fee burthened are precisely the same; I have not said in the case of life-rent that it was improper in consequence of any burthen on the life-rent.

Archibald Douglas, Esq., called in; and Examined.

Archibald Douglas, Esq.

4965. *Chairman.*] YOU reside at Old Melrose, in Roxburghshire, do you not?—Yes.

4966. Were you a freeholder in Selkirkshire under the old law?—Yes.

4967. You are connected with one of the candidates for Selkirkshire, Mr. Pringle, of Clifton?—Yes, who was formerly Member.

4968. You are his brother-in-law?—Yes.

4969. Do you remember the election of 1832, in which Mr. Pringle was a candidate?—Yes.

4970. Do you remember the termination of that election?—Yes.

4971. It ended in the return of Mr. Pringle, of Clifton, by a majority of how many?—Of nine, I think.

4972. Do you remember subsequently to that election any change taking place in the constituency of Selkirkshire, any addition to the constituents, or any qualification required?—Yes, I do.

4973. Will you state what that change was?—There was a property purchased in the town of Selkirk, the principal inn, by the agent of Mr. Pringle, of Whitebank, as I understood.

4974. Did

4974. Did you hear of that soon after the election?—I think in the month of January 1833.

4975. Was that property bought for a political purpose?—I was given to understand so.

4976. Do you know whether other properties had been bought in the same manner in the county?—I have heard there were.

4977. Do you know it has been done subsequently to any extent?—Yes.

4978. Do you know that the acquiring property for political purposes is going on to a great extent in Selkirkshire at present?—Yes.

4979. Did you take any part in that system?—A considerable part.

4980. Have you created yourself a good many qualifications for political purposes on properties?—Yes.

4981. When did you commence doing that?—In December 1833, or January 1834; I do not precisely recollect the day.

4982. What was the first qualification of the kind you made in Selkirkshire?—I disposed of a property I had acquired in the month of March 1833, in the month of January 1834, in favour of certain life-renters.

4983. How many of them were there?—I think five.

4984. What was the name of that property?—Fairbairn's-lands.

4985. Will you state the names of the parties to whom life-rents were granted?—Sir Thomas Brisbane, Colonel O'Reilly, the Rev. Patrick Bradley, John Tulloh, residing at Eliston, and Captain Wybergh.

4986. Had you bought that property expressly to make votes upon it?—Not expressly for the purpose of creating votes.

4987. How came you to purchase it?—I came to purchase that property in consequence of a representation that was made to me by Mr. Haldane.

4988. What was the nature of that representation?—The nature of that representation was, that Mr. Fairbairn, the proprietor of the lands, had been applied to by the opposite party to make a sale of those lands; Mr. Haldane stated to me, that he thought the price asked was by no means extravagant, and that, independently of any political consideration whatever, he conceived those lands, at the price asked, would make a fair investment of money. I certainly would not have made a purchase of those lands had I not very well known at the time that the inn at Selkirk had been purchased. I do not hesitate in saying that my intention in purchasing it was to prevent its falling into the hands of the opposite party.

4989. Do you remember what was the price you paid for that purchase?—I do not exactly recollect; I should suppose somewhere about 1,500*l.*

4990. That was an out-and-out purchase, made for yourself?—It was.

4991. At the time you bought this property, did you hear that the tory party were buying up properties in that neighbourhood?—Yes.

4992. In all directions?—Yes.

4993. Was Fairbairn a man of any political opinions?—Oh yes.

4994. What are his politics?—Decidedly liberal.

4995. Were the properties bought promiscuously, or were they bought principally from whigs or tories?—There did appear in the opposite party a strong predilection for whig property.

4996. What was the rental of that property?—I think it was upwards of 50*l.*

4997. You gave a conveyance to those five gentlemen?—I did.

4998. Was it a real conveyance, with an understanding that they were to pay their prices for the life-rents?—It was.

4999. Were all the five inrolled upon the qualifications you gave them?—No, they were not all.

5000. Which of them was not inrolled?—Captain Wybergh.

5001. How happened he not to be inrolled?—I had conceived, from certain circumstances, and from certain conversations that I and others had had with Captain Wybergh, that I might with propriety convey to him a life-rent on that subject; it afterwards turned out that I had been deceived or in error, and Captain Wybergh did not homologate the transaction by sustaining the claim before the Registration Court in Selkirk that year.

5002. Was his claim withdrawn in consequence of that?—His claim was not withdrawn in consequence altogether of that; I believe his claim was withdrawn from the circumstance of the want of mandate being objected to by the brother of Mr. Pringle, of Whitebank, whose claim came to be discussed immediately before

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before Captain Wybergh's, and when that objection to the want of a mandate was sustained, the opposite party turned round and said, "Well, where is your mandate for Captain Wybergh?" and there was no one at the time, and his claim was of course rejected.

5003. Did he remain possessed of his qualification by this conveyance you had given him?—No.

5004. Was another person substituted in his place?—There was.

5005. Who was that gentleman?—I think Captain Russell Elliott.

5006. Was he inrolled upon that qualification in the following year?—He was.

5007. When you bought this property, were you infefted upon it?—Yes, to the best of my recollection.

5008. And the title was made to yourself?—Most distinctly.

5009. When you bought this property, did you do it with any understanding with Mr. Pringle, of Clifton, or his concurrence?—None whatever; I do not suppose Mr. Pringle was aware that the property was in the market, or knew anything at all about it.

5010. Did you do it individually, or in concert with your party?—I did it individually, on my own responsibility.

5011. Did you have conversations with Mr. Pringle, of Clifton, upon the subject of buying or acquiring properties with a view to making qualifications?—Frequently.

5012. Did Mr. Pringle assent to the expediency of that?—Quite the contrary; he said, in the first place, that he had not the least inclination to follow out any such system; and he also doubted very much whether he had the means; but he had no doubt as to the impropriety of that course.

5013. Sir *William Rae.*] How soon after you made the purchase were the life-rents created?—The purchase, I think, was in March 1833, and the life-rents, I think, in January 1834.

5014. What price was paid for those life-rents?—I am sure I cannot recollect; I left the matter of arrangement in the way of detail to Mr. Haldane, who carried through the transaction, and I do not at the present time recollect; it was calculated on the Annuity Tables, I believe.

5015. Do you remember how it was paid?—It was partly paid by bills.

5016. Was any part of it paid down in cash?—I cannot recollect whether the Rev. Patrick Bradley did not pay a certain portion of the price: but of that I cannot speak positively.

5017. What became of the bills; were they given to you?—They were given to me.

5018. Have they been paid?—I think they have not.

5019. Has any interest been paid upon them?—I should suppose there has.

5020. Do you know that interest has been paid upon them?—I left that matter for Mr. Haldane to arrange.

5021. Is it a field, or what is the nature of the property?—Lands.

5022. In whose possession is it?—It is now in the occupation of the former proprietor.

5023. How is that?—He took it upon lease.

5024. From whom?—From me.

5025. When?—Subsequently to the purchase.

5026. How could you grant a lease of subjects that were life-rented to other parties?—The purchase was in March 1833, and the life-rents were not created until January 1834.

5027. You granted the lease in the intervening period?—Yes, at least that is the impression upon my mind.

5028. Who receives the rents?—Mr. Haldane receives the rents of those lands.

5029. On whose behoof?—For the behoof of those interested; the life-renters.

5030. You do not know what he has done in that respect?—No, I do not.

5031. Captain Wybergh knew nothing of those proceedings at the time you made the claim for him?—It would appear so, that Captain Wybergh was not made, as he thought, sufficiently acquainted with the nature of the transaction; but, if the Committee wish, I am perfectly ready to enter into the particulars.

5032. *Chairman.*] Is Captain Wybergh a very intimate friend of yours?—One of the most intimate friends I ever had.

5033. Is he a relation?—Yes, he is a second cousin.

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5034. Had you seen him between the date of the disposition to him and the day of the inrolment, when his claim was lodged?—Yes.

5035. Had you had conversations with him upon that subject?—Yes, I had conversations with him; the conversation was brought about by himself, in reference to the system that was pursuing, both in Roxburghshire and in Selkirkshire, and in which he certainly did highly disapprove of what was going on.

5036. Sir *William Rae.*] Did you acquaint him at the time that you had conveyed to him the life-rent?—I did not directly acquaint Captain Wybergh, because I had little doubt, from the nature of the conversation, that he was in some measure aware of it; we did not enter into particulars.

5037. Viscount *Stormont.*] Did you ever enter into any stipulation with Captain Wybergh with regard to the price of the life-rent?—No, I did not.

5038. Did you ever make any communication to him after you granted the disposition, and before the time of the registration?—I did not; nothing beyond the conversation which took place at the period to which I have just referred, between those two dates.

5039. That conversation was previous to the granting the life-rent, was it not?—No, subsequent to the grant of the life-rent.

5040. Did you tell him you had granted him a life-rent?—No; from the nature of my conversation with him at the time, I did not enter into particulars; the impression upon my mind arising out of the conversation had been, that he was aware of what I had done.

5041. Do you know whether Captain Wybergh had claimed in Roxburghshire at the same period, in 1834?—I could not be aware of that, because it was at a period when the claims were not given in.

5042. Are you aware now that, at that time, there was a claim put in for Captain Wybergh in Roxburghshire?—Not at the period to which I understand reference to be made.

5043. Are you aware of that now?—Yes, I am.

5044. Was that claim rejected?—It was.

5045. Do you know for what reason?—Yes.

5046. What was the reason?—It arose from the want of a mandate; I believe that question was brought forward; however that difficulty was removed in consequence of a supposed understanding subsisting between the agents of the two parties, that mandates were not to be insisted on; that is to say, that the want of a mandate on either side should not be fatal to the claim. In the first instance, I believe, the question arose as to the validity of the title in favour of Captain Wybergh and others, how far the deed being in the possession of the agent who executed it for Captain Wybergh and others' behoof implied a sufficient mandate. There was a technical question, on a point of law, arose, which brought the matter fully before the Court; and, of course, I, who executed the deed in favour of those parties, was referred to, to know upon what authority I made a conveyance in favour of those individuals.

5047. Was that the conveyance in the county of Roxburgh?—Yes.

5048. *Chairman.*] Did you make a conveyance to Captain Wybergh and other individuals in the county of Roxburgh?—Yes.

5049. Viscount *Stormont.*] Was the case in Roxburgh similar in a degree to that in Selkirkshire?—Not exactly similar.

5050. Was that a life-rent?—I think it was an out-and-out disposition; the one in Selkirkshire was a life-rent.

5051. Had that been paid for?—No, it had not.

5052. Was Captain Wybergh aware that you had made that disposition in the county of Roxburgh?—I cannot speak positively as to that fact.

5053. Have you given it to him, or made it over to him?—Directly to Captain Wybergh, I have not.

5054. In point of fact, there was a great similarity between the rejection of the two claims in respect of the possession of either of the properties?—There was a similarity, because it had a reference to qualification in the two counties;

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I will endeavour to make the statement as short as possible, but I am afraid I cannot make it very short.

5055. Do you state generally that there was a similarity between the two cases?—There was certainly a similarity; I do not see exactly how I could explain the one case without referring to the other; I will just enter into as short a statement as will show the case as it stood in Roxburghshire.

5056. Are you aware that there was a paragraph in the Carlisle paper upon the subject of that transaction?—I am quite aware of it; I was made aware of that circumstance from various quarters; there could be no doubt of my knowledge of that fact.

5057. Do you know whether in consequence of that paragraph appearing in the Carlisle paper, Mr. Rodger, the agent for Mr. Pringle, of Whitebank, wrote to Captain Wybergh to inquire whether his claim for the county of Selkirk was founded upon the same description of right?—I never heard of such a thing till this moment; I was not aware of Mr. Rodger's correspondence with Captain Wybergh.

5058. You do not know whether Captain Wybergh gave authority to Mr. Rodger to state in court that he never had made such a claim?—I never headr of such a thing.

5059. Sir *William Rae.*] When the dispositions were granted to the liefrenters, was there one deed, or more than one?—To the best of my recollection there was but one deed; but of that I would not wish to speak positively.

5060. Do you know when it was executed?—I saw it in Mr. Haldane's office in Galashiels.

5061. Do you remember what became of it?—It was left with Mr. Haldane.

5062. You did not have possession of it at all, did you?—I did not take possession of the deed; but I beg to preface that, by saying I do not speak positively to whether there was one deed or several deeds; I think, on recollection, there was more than one deed.

5063. What became of those deeds?—I left them, as I understood was the practice generally, with the agent of the parties in whose favour they were executed; it was the custom for the person executing the deed, to leave it in the hands of the agent of the party interested.

5064. You left it with Mr. Haldane?—I think I did; I am quite sure I had not the possession of it.

5065. Did you deliver the deed to any of those parties?—No, I left it with Mr. Haldane.

5066. Has any demand been made upon the parties for the price of those liferents?—I believe there has.

5067. Not by you?—Not by me, but I believe by Mr. Haldane.

5068. You have received no part of the interest or price since that?—I suppose Mr. Haldane has placed it to my credit; I have had no account or reckoning with him since that.

5069. The purchase-money was paid to Fairbairn, from whom you purchased it?—The price was paid by me; that is to say, no part of the price formed a burthen upon the property; the money was paid by me.

5070. It was not taken without paying a price for it?—No, certainly not.

Jovis, 9° die Martii, 1837.

MEMBERS PRESENT.

Sir William Rae.	Viscount Stormont.
Mr. Divett.	Lord Stanley.
Mr. Bingham Baring.	Mr. Buller.
Mr. W. Campbell.	Mr. Dunlop.
Lord Advocate.	Mr. Ferguson.
Sir Hugh Campbell.	

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Archibald Douglas, Esq., again called in; and further Examined.

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5071. *Chairman.*] YOU stated yesterday, in the case of Fairbairn's lands, you had put in a claim for Captain Wybergh, for whom you thought you were justified in doing so; that you afterwards found you had been mistaken, and that he was not admitted upon the roll?—That was the case.

5072. The following year Captain Russell Elliott was inrolled upon the qualification which you conveyed to him in the place of Captain Wybergh?—Yes.

5073. Do you remember the case of another property on which a claim was put in for a gentleman, and he was not admitted to the roll, in consequence of something similar?—Yes, Mr. Thomson.

5074. There were some lands bought from Mr. Clezy, were there not?—I believe there were.

5075. Several gentlemen, principally residing in Galashiels, were inrolled upon that property?—I understood so.

5076. Was that property purchased by you?—It was not.

5077. Was it purchased by your directions?—It was not.

5078. Did you find any names or give instructions about any persons to whom the conveyance was made?—I did.

5079. Did you give directions to Mr. Haldane upon that subject?—I did.

5080. Did you give instructions to him as to any but Mr. Thomson?—No.

5081. You ordered him to make out a conveyance to Mr. Thomson as one of the joint proprietors?—I did.

5082. Had you Mr. Thomson's authority to do that?—I conceived that I had Mr. Thomson's authority to acquire for him a freehold qualification in the county of Selkirk.

5083. Will you state the grounds on which you form that opinion?—Mr. Thomson, late tutor in the family, I think, of Sir Walter Scott, in a conversation we had touching the politics of Selkirkshire, expressed to me a desire to obtain a qualification in that county; at the same time, I must say that he stated to me that he had some difficulty in carrying his wishes into effect, inasmuch as he had not, to use his own expression, much spare cash, but that he would like very much to have one, and that if it could be so arranged, he could obtain a qualification in the county, without being called upon immediately for the advance of the money necessary, he should like it very much indeed; I told him I would see what could be done, and mentioned to Mr. Haldane the nature of the conversation I had had with Mr. George Thomson; and Mr. Haldane afterwards stated that there was now, he thought, an opportunity of putting Mr. Thomson upon the roll, without his being called upon immediately for the money; I said to him, if he would explain to me the nature of the vote Mr. Thomson could have, I would consider of it; he did so, and I said, "Well, I think it will do very well for Mr. Thomson;" and in consequence he inserted Mr. George Thomson's name where it appears stated there.

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5084. Did Mr. Thomson agree to take that vote in consequence of your asking or urging him to do so?—No, I never pressed or urged him to do so; Mr. Thomson expressed his wish to have a vote; he brought on the conversation, and not I.

5085. He asked you to manage to get one for him?—Yes, at least I conceived he did.

5086. What was the arrangement by which Mr. Thomson was to acquire this vote?—The arrangement was, that he was to have a life-rent upon that subject.

5087. Was he to give any thing for it?—That is really a matter of detail; I believe that the property was bought; the amount I do not exactly recollect, but whatever was exacted of him he would be called for to pay, or account for in some shape.

5088. You do not know whether it was proposed he should give a bill for the amount?—I think by the arrangement it was; I am led to believe so, from the circumstance that Mr. Haldane said it was not necessary there should be an immediate advance of the money.

5089. Do you know whether he did give a bill?—I believe he did not.

5090. His claim was not admitted at the Registration Court?—No, it was not.

5091. What was the reason of that?—As far as I understand, it was this; Mr. Thomson had been cited by the agent for Mr. Pringle, of Whitebank, to appear in court, in order to establish his claim, as a witness; they wished to examine him on the opposite side, and I believe it occurred to Mr. Thomson that he would be asked some questions as to his having paid the price, and being aware that he had not settled the amount of the price, he felt some sort of delicacy about the matter, and did not appear as cited, consequently his claim fell to the ground; that was the whole of the circumstances I am aware of.

5092. The claim fell to the ground, solely in consequence of his non-appearance?—So far as I recollect; I am speaking with reference to a period at some distance; but, according to the best of my recollection, that was the reason of his not being put on the roll, his not appearing to be examined when cited, touching his claim.

5093. Are you certain it was not from a disinclination to have a vote?—I believe the contrary.

5094. Do you happen to have heard, subsequent to that, Mr. Thomson's opinions relative to the getting a vote in Selkirkshire?—Yes, I did; Mr. Thomson afterwards stated to me, that so soon as his own circumstances would admit of it, he was determined to have a vote in the county of Selkirk, to support the liberal interest in that county.

5095. Sir *William Rae.*] What account did he give of not taking the vote which had been conveyed to him in the way you have mentioned?—I think the account he gave was to this effect; from the feeling which I have stated to the Committee, he had a delicacy of appearing before the court, not having paid the money.

5096. He had not authorized the purchase of this particular property?—Not of that particular property.

5097. Had he known of the purchase before the claim was made?—I cannot speak positively as to that point; I think it is very probable Mr. Haldane had communicated the fact to him.

5098. He had paid no part of the price, nor given any implement for it?—So far as I know, he had given no implement for it.

5099. Do you know how the property was paid for, who was the drawer of the bills?—I cannot say.

5100. *Chairman.*] Had you any thing to do with the purchase of property for other individuals?—To the best of my recollection, I think it is very likely; I was aware by Mr. Haldane mentioning it to me; but I was not asked for any authority in the matter; it might have been mentioned to me probably in the course of conversation upon those subjects; if my opinion was asked, I have no doubt I should have recommended its being done, knowing the object for which it was done.

5101. You yourself made other purchases, besides the one of Fairbairn's land, did you not, which were paid for?—Purchases were made by my instructions.

5102. Were they paid for by yourself?—Yes; I furnished the person who made the purchases with the means of paying for them.

5103. Were those purchases made by yourself or through your agent?—Yes.

5104. Is it not correct, then, to say that they were made by yourself?—Most unquestionably.

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5105. One purchase was a purchase in Galashiels, was it not?—There was a purchase made in Galashiels.

5106. That was made through the agency of Mr. Haldane?—Yes.

5107. Were you the person that found the funds for that purpose?—I was.

5108. You paid for it?—Of course.

5109. You conveyed it afterwards to two men, Mr. Maine and Mason?—The property was conveyed to Maine and Mason.

5110. Do you recollect the price of that property?—No, I do not exactly; I think upwards of 300*l.*, but I cannot speak positively.

5111. Did you convey to them in life-rent?—No, in fee.

5112. Did they pay you any thing for it?—They granted, I think, for the purchase-money their joint bill.

5113. They granted that to you?—Yes.

5114. Do you hold that bill at present?—I do not.

5115. Is it unpaid still?—I cannot speak positively as to that fact.

5116. In whose hands is it?—I left it in the hands, I think, of Mr. Haldane.

5117. Have you received any rents or produce of that property since you conveyed it to those individuals?—None.

5118. Sir *William Rae.*] Those bills are in Mr. Haldane's hands, are they?—That bill, I believe, is in the hands of Mr. Haldane; I am not sure whether it is in his hands now, or whether it is in circulation; I left it in his hands.

5119. You do not know whether any interest has been paid upon it?—I am sure I cannot undertake to say; I have no doubt that Mr. Haldane would demand the interest upon it at the proper time.

5120. You also made a purchase, did you not, of some houses in Selkirk, upon which you gave conveyances to men of the names of Mean and Mather?—I made a purchase of a property on which Mean and Mather were inrolled, but at this moment I do not recollect whether it was in Selkirk or Galashiels; I thought it had been in Galashiels.

5121. You recollect having made that purchase?—Perfectly.

5122. Do you recollect the price of that?—No, I do not.

5123. Was that a purchase made out and out by yourself?—Yes.

5124. And the money paid by yourself?—Yes.

5125. You afterwards gave conveyances to those individuals?—I am not very certain whether the disposition was, in the first instance, taken in favour of myself, or their names were afterwards inserted, for it was very frequently the case in Selkirkshire and elsewhere, that properties were purchased, and the disposition, in the first instance, was taken in favour of the party or parties to whom they were afterwards conveyed.

5126. Is that a recent practice?—Not a very recent practice.

5127. Is it a practice that has commenced since the time when properties were acquired for political objects?—Yes; I never heard of the practice being followed, but from the period referred to.

5128. You are not certain whether, in this instance, the conveyance was to yourself, in the first instance, or whether the names of those two individuals were inserted in it?—No.

5129. Those two individuals were inrolled upon that property?—They were.

5130. Did they pay you the price of that property?—They did not.

5131. When that conveyance was made out to them, did you expect they would pay you for that property?—Most unquestionably.

5132. Did they give you any bond or bill for the value?—They did not.

5133. Had you any acknowledgement whatever, or did you receive any thing in return?—I think it will be necessary for me to explain that case to the Committee; I received instructions from Mr. Mather, to acquire for him and his friend and relative, Mr. Mean, of Orniston, freehold qualifications in the county of Selkirk; I did so; when I made the conveyance in favour of those two individuals, Mr. Mather asked me how I wished the price to be paid, for he was afraid it would not be convenient for himself, and he could not speak as to Mr. Mean, to pay the whole amount of the price immediately on the conveyance being made out in their favour; I said to him, that was a matter of very little consequence to me, inasmuch as I had paid it myself; and as I did not want it immediately, they might consult their own convenience in settling with me; they said they were perfectly ready to pay a part of the price; at least that he was, and that he would give his promissory note for the balance; I said, "Very well; perhaps the best plan, as it would not be

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be very convenient for me to remain very long out of the money I had advanced, will be, that you and Mr. Mean should give me your joint bill for the amount;" he said, "Very well;" and in consequence of that, I instructed Mr. Haldane to draw out a bill in the usual form, for the purpose of obtaining their signatures; some time elapsed before I had an opportunity of taking this bill to Mr. Mather; when I did so, says he, "Very well, I am very glad you have done so, for I saw Mr. Mean the other day at the market at Jedburgh, when he said, 'Mr. Mather, we should have this matter settled,' alluding to the transaction; 'Mr. Douglas has been very long out of his money, and it is time we had it settled in some shape or another;'" then said Mr. Mather, "Mr. Douglas sent me a promissory note written out, which I have not by me just now, but the very first time you are at Forfield (the residence of Mr. Mather), we will have it settled;" I left the matter with Mr. Mather for that purpose; the bill was lying for some time in Mr. Mather's possession, I believe, before he had an opportunity of presenting it to Mr. Mean; and during that time Mr. Mean left the country and went to London; when he was absent from the country, I asked Mr. Mather whether he had ever got the transaction settled with Mr. Mean; he said, "No; to tell you the truth, it has gone out of my mind, and I have not had an opportunity of doing so;" I said, "Very well, as soon as you have an opportunity, do it." Mr. Mean afterwards returned; the matter stood over; and just when I applied again to Mr. Mather, telling him it was now time it was settled, having no further delicacy in the matter, Mr. Mean was taken very ill, and afterwards died of that illness.

5134. Are both those parties dead now?—They are.

5135. Do you know that the bill you had given to Mather was found in his repositories after his death?—I believe it was.

5136. What became of the property after their death?—Of course it became the property of their heirs.

5137. Is it in possession of their heirs now?—It is not.

5138. In whose possession is it at present?—It was conveyed by their heirs to certain individuals, I believe, residing in the district of Kelso.

5139. Are those individuals inrolled upon it now?—I do not know whether they are inrolled alone upon that property; the impression upon my mind is, that there was some defect or other; that the parties in whose favour it is now conveyed found that they had not sufficient property, owing to some question with regard to boundary, I think, for part was in Roxburghshire and part in Selkirkshire, and in order to eke out the votes of those individuals, a conveyance was taken of the property in question in their favour.

5140. It was made over by the representatives of Mean and Mather to other individuals for a political purpose?—Unquestionably.

5141. And it now forms a part of their qualification?—It does.

5142. Sir *William Rae.*] How much was the bill for?—I do not recollect at this time the exact amount of the bill.

5143. Whereabouts was the amount of it?—I think upwards of 300*l.*

5144. Did you not present that bill to Mr. Haldane?—I believe the bill was and is now in my possession, the unaccepted bill.

5145. *Chairman.*] You mean the bill found in Mather's repositories?—Yes.

5146. Sir *William Rae.*] It is now in your possession, is it?—It was not given me by Mr. Haldane directly, if my memory serves me, but by one of the parties; Mr. Mather, I think, returned me that bill.

5147. Did you, in one way or the other, pay the 300*l.*, when you got possession of that bill?—I had paid the 300*l.* before I got the bill into my possession; I was in advance the 300*l.*

5148. *Chairman.*] You paid that at the time you purchased the property?—Of course I did.

5149. Lord *Stanley.*] At the time of purchasing that property, who produced the cash for the payment of it?—I did.

5150. When Mean and Mather made the purchase, or it was supposed to be made by them, who produced the cash?—The property was purchased by me, and was paid for by me of course; after the conveyance was made in favour of Mean and Mather, Mean and Mather stood my debtors for the amount.

5151. Who were the persons from whom you purchased this property?—I do not recollect at present; one man of the name of Paterson, speaking from recollection.

5152. Paterson did not sell to Mean and Mather, but to you?—Paterson did not sell to Mean and Mather, but to me; that is to say, supposing the disposition to be taken in my favour at the time of that sale; but I explained, a little while ago, that it was very frequently the case that dispositions were made of property to persons selling, without filling up the names, and I cannot speak positively to whether that was the case there.

5153. Was the money paid upon that occasion by you or by Mr. Haldane?—The money passed through Mr. Haldane's hands; but I furnished Mr. Haldane with the money to make the purchase.

5154. A bill was given by Mean and Mather?—There was a bill written out for their acceptance some time afterwards; I have no doubt that the date of that bill would correspond with the date of the disposition in favour of the parties.

5155. To whom was that bill given?—It was given to me.

5156. When?—I do not recollect the exact period.

5157. By whom was it given to you?—It was written out by Mr. Haldane and given to me for the purpose of getting the signatures of Mean and Mather.

5158. Is that in the shape of a promissory note?—Yes, at three days' date.

5159. Payable to whom?—To myself.

5160. Not to Mr. Haldane?—No, I think to myself.

5161. Was it not afterwards received by you, in the course of a settlement of your transactions with Mr. Haldane?—That bill was given to me by Mr. Haldane at my request, in order to get the signatures of Mean and Mather to it; and I just explained to the Committee how it happened that I did not get the signatures of Mean and Mather to it.

5162. Sir *William Rae.*] No price was paid in reality, either by bill or in cash by those parties?—No.

5163. Viscount *Stormont.*] The property has passed into the hands of other individuals?—Yes.

5164. Has the 300*l.* been paid back to you for that property?—It has.

5165. By the parties who are now in possession?—Yes; that is to say, they accounted to Mr. Haldane for the possession, and Mr. Haldane gave me credit for that amount.

5166. Whilst Mr. Mean and Mr. Mather held the property, did you receive any interest for the 300*l.*?—I have no doubt the interest would be placed to my credit from the proceeds of the rent of the lands placed to their account.

5167. Can you state whether you received merely the interest on the 300*l.*, or the annual rent of the property?—Merely the interest; I had nothing to do with the rents.

5168. Sir *William Rae.*] Did you pay for the conveyances to Mean and Mather?—I believe the conveyances, so far as my memory serves me, were charged in an account against themselves.

5169. You do not know whether they paid the account?—I cannot speak to that.

5170. Viscount *Stormont.*] There were two deeds drawn up to Mean and Mather; are you possessed of either of them?—No.

5171. Were they ever in your possession?—I think they were; I think I got them from Mr. Haldane at the time that I got the promissory note for their acceptance; I think I got the deeds with a view to showing to Mr. Mather the titles and dispositions, but I cannot speak positively as to that.

5172. *Chairman.*] Have you been very largely concerned in making purchases for the same object for which you made these?—Yes, to a considerable extent.

5173. You have purchased a great many properties, and have granted many dispositions of them for political purposes?—I have.

5174. In those cases, were you very particular about the mode in which the thing was done, or did you leave it to the agent?—I was not very particular as to the mode in which it was done; I think the Committee cannot expect that I should be very particular; I do not pretend to have any knowledge of law, or to possess any particular knowledge of conveyancing, or any thing of that kind.

5175. Did you give any instructions to your agent to be particular as to making out the real transactions, that they should have in all cases a real *bonâ fide* interest in the property they acquired, or, being made for political purposes, were you satisfied with making such votes as should pass before the Sheriff's Court?—Really, to speak honestly, I believe our first consideration was undoubtedly to make

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the transactions as real as possible, but I will not hesitate to state to the Committee, that our principal object was to get our friends pass muster.

5176. In the instructions you gave as to taking the bills, was this an idea of your own or your agent, or how did it originate?—I do not mean to say I had not a knowledge of the business, that I might have pointed out to my agent; I know perfectly the difference between receiving the money in hand, and receiving what I conceive to be equivalent to it, security from parties who, I knew, when called upon, could pay the amount of the obligation under which they came.

5177. Do you know whether the practice of creating those votes merely for the franchise, was going on to any extent in the county at that time?—I had at the time no doubt whatever in my own mind, that the practice was very generally followed; there cannot be a question of that; the impression upon my mind was certainly very much confirmed, by finding it was the impression on the mind of every one I met with, whether whig, tory, reformer, radical, or whatever it was.

5178. Did you know of any other individual of your party who made votes in the same manner at the same time?—I am not aware (I am sorry to state) that they did.

5179. Had you any opportunities of knowing their opinions upon the subject?—Oh yes.

5180. Did you hear any discussions upon the occasion of purchasing the inn at Selkirk, which you say was the cause of your making those purchases?—Frequent occasions.

5181. What was the general impression regarding that purchase?—It created very great surprise, and people seemed very much out of humour about it, very much shocked, I do not hesitate to say; and there were very different opinions amongst those of my way of thinking, as to the best mode of meeting such proceedings, or rather counteracting them; some were for following out one course, and some for following out another; some were for waiting till the thing got to such a height that the Legislature would be called upon to interfere, and so forth; there were 150 different schemes thought of, which I cannot enumerate.

5182. You took your own line?—I did.

5183. You commenced purchasing some properties?—I did.

5184. Had you any occasion publicly to give an explanation of what you were doing by your party?—I had.

5185. Do you recollect the occasion of a dinner given at Melrose soon after the registration of 1834?—Yes.

5186. Did you advert upon that occasion to what you had been doing?—I did.

5187. Will you state the reason of doing it, and the general import of that which you stated?—To the best of my recollection, I stated to those persons, that I was well aware that I had embarked in transactions, of the propriety of which there were very great doubts entertained amongst our friends; and indeed I had been given to understand, that I had brought upon myself a considerable degree of odium by the line I had thought proper to chalk out for myself.

5188. From which party had you brought upon yourself a considerable degree of odium?—My own friends; I stated, as an apology for my doing so, that the practices of those opposed to me were carried on to such an extent, that I thought, were the Legislature even to interfere, it was not likely that that interference would go the length of affecting those who had succeeded in getting by such means upon the roll; but in all probability any thing that was done by Parliament would be prospective, and were I right in my conjecture, we should be placed in a worse situation than we were before, with all this fine amendment that we contemplated the Legislature bringing about; and I made use of that as an argument in defence of what I had done, and I remember making use of a somewhat common illustration, in such cases where a man is attacked, and he is obliged to resort, in defence, not exactly to the means for the attainment of such an object which the law points out; but I recollect mentioning, that if you meet a man in a lane with a stick, just about to knock you down, I thought you would not be very particular, if you had a weapon in your own hands, about striking the first blow.

5189. Were you aware that the parties whom you were addressing upon that occasion disapproved of the course you had followed?—I can only say, that there could not be the slightest doubt of that; and I think the nature of my own observations show that, that I stated that it was in my own vindication; I must have been aware at the time, that the audience I was addressing required some explanation at my hands.

5190. You

5190. You have made purchases for political purposes in Selkirkshire, and have continued doing so?—Whenever an opportunity occurred.

5191. Viscount *Stormont.*] When did the dinner referred to take place?—I think it must have been in 1834.

5192. *Chairman.*] What was the occasion of that?—I believe there was a very strong feeling in part in my favour amongst my own friends; and I must add, amongst a considerable number of my own personal friends; but political opponents, arising out of some very harsh, and I would add, ungentlemanly treatment, that I had met with from those opposed to me, certain treatment connected with politics; and it was as a token of respect to me that the dinner on the occasion alluded to was given to me.

5193. Was it in consequence of what had taken place in the Registration Court regarding the votes of the Wyberghs?—It was.

5194. It was in consequence of what had taken place on that occasion, a dinner was given to you immediately afterwards?—Yes.

5195. Was one given to you at Hawick soon after that?—There was.

5196. Viscount *Stormont.*] Was there a very great outcry in the county on account of the Wybergh votes?—I do not think the outcry against me was so great; it would be difficult to say; but party in that part of the county ran exceedingly high, and persons are very apt to take up particular sides; but I can state, and I do so with joy, there were a great number of even my most bitter political opponents did not join in the cry raised against me; it created, no doubt, a very great sensation.

5197. *Chairman.*] You were examined in the Registration Court in 1834?—I was.

5198. The attempt in your examination was to prove that you had acted without authority in endeavouring to put the Wyberghs upon the roll?—Yes.

5199. There were paragraphs in the newspaper on the subject?—Innumerable.

5200. You underwent a long and close examination upon that subject?—I did.

5201. It was in consequence of the treatment that you met with on that occasion that the dinner was given to you afterwards?—It was.

5202. Viscount *Stormont.*] Do you know the case of some parks near Selkirk, purchased by James Elliott, Archibald Jardine and William Rutherford?—Yes.

5203. Do you know who managed that purchase?—Mr. Haldane.

5204. Was the money paid for it in cash?—In the first instance it was paid for in cash.

5205. Was it paid by those three gentlemen?—The money was advanced, in the first instance, by myself; Mr. Elliott paid the money; Mr. Jardine and Mr. Rutherford granted their joint bill for the amount of the price.

5206. Have you received interest upon that joint bill?—I received the interest upon that bill while the bill was in my possession.

5207. The bill is no longer in your possession?—The bill is no longer in my possession.

5208. Has it been cancelled or disposed of?—It has been circulated, of course; those who hold the bill will receive the interest.

5209. You do not know that it has been cancelled by those parties?—I cannot say; it may have been.

5210. From whom did you receive the interest, did you receive it direct from the parties?—The interest would be accounted for by Mr. Haldane, who, I understand, looks after their interest in the transaction.

5211. Sir *William Rae.*] You are sure you did not give Mr. Haldane the money?—I am not sure of any thing of the kind; I did give Mr. Haldane the money, in the first instance; that is to say, I paid the purchase-money.

5212. You did not get payment from the parties?—Not until I reconveyed it to them.

5213. Viscount *Stormont.*] When did you dispose of the bills of those two individuals?—I am sure I cannot exactly say; while I had them, the interest, of course, was accounted for to me, and when the bills passed from my possession I took no further notice about the matter; I had nothing more to do with it.

5214. Has Mr. Haldane accounted to you for the interest on those bills?—I have no doubt Mr. Haldane is prepared to do so; I have had no account or reckoning with him upon those matters; I have no doubt that will be placed to my credit.

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5215. You do not speak from information upon the subject from him?—I hold him my debtor to the extent of the time the bills were in my possession, and if he has not returned me the account for that interest, he is liable to do so; but I have private transactions with Mr. Haldane, on which it is probable I may be still his debtor, after my having credit for that interest.

5216. Why did you consider Mr. Haldane responsible for that interest, instead of Mr. Rutherford and Mr. Jardine?—Because I conceived Mr. Haldane would know whether he received the rents, acting as agent for those parties; that while I was in possession of the bill he would debit the rents with the amount of the interest; that was the natural conclusion to which I came.

5217. Do you know whether Mr. Haldane has had instructions from Mr. Jardine or Mr. Rutherford to pay interest to you?—I cannot speak as to that.

5218. Sir *William Rae.*] If those persons, Mr. Jardine and Mr. Rutherford, were persons in good circumstances, why should they not pay the money?—I suppose it was not convenient to them; I did not examine into their motives; I was quite satisfied with their responsibility, and had it been as much more, I should have been satisfied with their security.

5219. Mr. *Buller.*] When you parted with the bills, did you receive their value from the parties to whom you parted with them?—Yes, or they would not have got the bills.

5220. Sir *William Rae.*] You did receive value for those bills?—I have received value for those bills.

5221. In what way?—I have received the amount they bear upon the face of them; I have made no further inquiry; I dare say Mr. Haldane will look after the interest for me, and I hope I may hear no more of them.

5222. Mr. *Buller.*] Ultimately, you did receive from each of the three parties the value of the subject they purchased?—Yes, I feel perfectly satisfied upon that head.

5223. Viscount *Stormont.*] There was a case of joint proprietorship the same year, a field near Selkirk, purchased by Mr. John Murray, of Uplaw, Andrew Murray, junior, advocate, and Alexander Kaye, of Charlesfield; are you aware of that?—I am.

5224. What was the price paid for that property?—I think it was between 700*l.* and 800*l.*

5225. Was that paid for in cash?—In part.

5226. Who paid the original proprietor?—I paid the original proprietor, through Mr. Haldane.

5227. Were you repaid?—The two Messrs. Murray paid me in cash; Mr. Kaye gave me a bill.

5228. Did you receive interest upon that bill?—I suppose I did, for it stands in precisely the same situation as the others; I can give no further explanation of the matter than I did upon the former occasion; it is in Mr. Haldane's management, at least I believe it is; Mr. Haldane acts as the agent of the purchaser from me, and of course the person who holds the bill at present from me will get the amount and the interest direct from the proprietor himself, Mr. Kaye, or from the person who acts as his agent.

5229. Have you parted with the bill?—Yes.

5230. How long since?—I am sure I do not recollect.

5231. Was that bill ever in your possession?—Oh yes.

5232. Not Mr. Haldane holding it for you, but in your own possession?—Yes.

5233. You cannot recollect how long you held it?—No, I cannot charge my memory; I can mention perhaps within a few months; I think it was a very short while indeed that it was in my possession, perhaps a twelvemonth; but I am speaking from memory, and I do not charge my memory; it is a considerable time since that bill passed out of my hands, and I received the value for it.

5234. Did you sell that bill?—I got the value for it.

5235. Two hundred and fifty pounds?—It might be 260*l.*; I am not quite certain as to the exact amount of the bill, but the whole of it; a bill was written out for the amount of the purchase-money.

5236. Do you know who holds that bill now?—I have some guess; I cannot speak as to who has the bill; it may have passed out of the hands of the person to whom I sold it, but I got value for it; it was considered a good bill; if the Committee insist upon it, I will name the party.

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5237. Is the bill cancelled or not?—I think it is, but I have no knowledge that it is; if it is paid up, of course it is cancelled; it was a fair transaction; the bill was granted by the party who made the purchase; I held that bill for some time; I cannot undertake to state how long, but I held it as long as it was convenient for me to be out of the money; then I received the value for the bill.

5238. Mr. *Buller.*] When you say you received value, you mean you received the full amount of the money for which the bill was drawn?—Of course.

5239. Viscount *Stormont.*] Had the interest been paid upon it during the time you held it?—I have no doubt the interest would be paid for it; I am quite satisfied, from the character of the person who granted the bill, he would account for the interest upon that bill, either out of the proceeds of the property he had acquired or from some other funds.

5240. Mr. *Buller.*] There was no understanding between you and the party who gave those bills that you should not call upon them for the payment of interest?—No such a thing ever crossed my mind, nor, I dare say, ever crossed theirs; it was a *bonâ fide* transaction out and out.

5241. It was understood you were to receive interest while you held the bills?—Yes, or those who came afterwards into possession of them would look, of course, to their own interest.

5242. Sir *William Rae.*] The person to whom you gave that bill was not Mr. Pringle, of Clifton?—It was not; Mr. Pringle, of Clifton, may have come into possession of the bill by this time, for any thing I know, but I have no knowledge of the fact; it was in the market, and any one who chose to give money for it might have it.

5243. Viscount *Stormont.*] Do you know any thing of a joint property of Mr. Richardson and Mr. Currie?—I do.

5244. Did you give instructions to Mr. Haldane to make a purchase for those gentlemen?—I do not know whether I gave instructions to Mr. Haldane to make the purchase for those gentlemen; but I gave instructions to Mr. Haldane to make the purchase, and I afterwards gave Mr. Haldane instructions to convey the property to Mr. Currie and Mr. Richardson.

5245. You had authority from Mr. Richardson and Mr. Currie to make that purchase in their names?—Not that particular property, or any particular property; there was no property particularly specified at the time, but I understood the question to be, whether I had instructions from those individuals to acquire a freehold qualification for them; I had, or conceived I had.

5246. In the following year there was a claim put in by Mr. Haldane; had he instructions from you to put in that claim for Mr. Currie and Mr. Richardson?—Very possibly he might; I do not recollect whether he had particular instructions with respect to those two gentlemen or not.

5247. Do you know whether the following year Mr. Richardson withdrew his claim?—No, I do not; I understood Mr. Richardson was inrolled, to the best of my recollection.

5248. Did you know that he had withdrawn his claim?—I never understood that he had withdrawn his claim; I was aware that his claim was withdrawn.

5249. Who paid the money for this purchase?—I think the money was advanced partly from my own funds, and partly from my own individual credit; the money was made forthcoming to Mr. Haldane by me for that purchase.

5250. Mr. Haldane made the purchase, and held you accountable for the money?—Yes.

5251. Did Mr. Richardson ever pay you any part of that money?—Mr. Richardson did what was equivalent.

5252. What did he do?—He granted me his promissory note for it.

5253. Was that note cancelled the following year?—I believe instructions were given by me to have that note cancelled the following year.

5254. Did you dispose of that property the following year?—I did not dispose of the property; Mr. Richardson disposed of it.

5255. He sold it to Sir David Erskine?—Sir David Erskine, I believe, was the person who succeeded Mr. Richardson in that property.

5256. Did Mr. Richardson ask to have his bill returned to him?—Mr. Richardson did not, as I recollect, ask any thing about having his bill returned to him; I cannot charge my memory with that circumstance; but I have no doubt he knew perfectly well that the person to whom he granted the bill was not very likely to take up the bill remaining in his possession; he had no further demand, as I understood;

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stood; but the moment I understood Mr. Richardson had expressed a wish to be relieved of the property, I gave instructions to Mr. Haldane to have Mr. Richardson's bill returned to him.

5257. Mr. Haldane was in possession of the bill?—I do not think he was at that particular period.

5258. How could he cancel the bill?—I suppose very easily; suppose he was to pay the amount to the person who had it, he would get back the bill.

5259. The bill was not in your own possession?—No, it was not.

5260. Do you know the reason why Mr. Richardson sold that property?—No, I am very diffident in giving a reason for what I do myself, and much more for what is the motive of other persons.

5261. Did he ever express any reason why he parted with that property; did you ever hear him give a reason?—No, I never heard him give a reason.

5262. Do you know that he declared the reason was, because he had never given instructions to have the property purchased for him?—I am obliged to your lordship for putting that question; with the leave of the Committee I will explain the particulars; I feel a certain degree of delicacy in bringing Mr. Richardson forward, in a matter in which a difference had arisen between two neighbours who were on an intimate footing.

5263. You will withhold every thing which you consider confidential, and explain only the general features of the transaction?—I had applied to several individuals on the very day that I took the liberty of waiting on Mr. Richardson, with whom, at that time, I was not on very intimate terms; I went to Kirklands, for the express purpose of asking Mr. Richardson whether he would acquire a freehold qualification in the county of Selkirk; I did not find him at home; I met him on my way home; he turned with me, and we had a great deal of conversation on the subject; Mr. Richardson felt extremely reluctant to enter on any such transaction; he said, that he very much disliked the system that was pursued, as he understood, by both parties, and that he did not really wish to lend himself as a party to it; Mr. Richardson stated other objections, and with the permission of the Committee, I will avail myself of the intimation I have received; I thought that I had got over those difficulties which had occurred to Mr. Richardson, and that he had, according to the impression on my mind before we parted, consented to acquire a freehold qualification in the county of Selkirk; in consequence of that impression, I certainly did conceive myself authorized to do in that case of Mr. Richardson what I had done in the case of others; for I did conceive that I had just as much authority from Mr. Richardson as I had from any other person, from whom, in place of ever finding fault with my having assumed an authority which they conceived they had not invested me with, I not only received the payment of the purchase made for them by me, but I also received their thanks for the trouble I had been at in their case; and I certainly must state to the Committee, in my own vindication, that having received the thanks of others, I looked forward also to receiving thanks from Mr. Richardson for what I had done.

5264. *Chairman.*] It turned out afterwards that Mr. Richardson did not wish to have that qualification?—It did.

5265. And he disposed of it to Sir David Erskine?—He did; Mr. Richardson, in short, wrote to me, and we had a little correspondence upon the subject; the result of the impression upon his mind was, that I should have communicated with him more upon the subject before I did it; now I had very little time for those things.

5266. *Lord Advocate.*] You had a conversation with Mr. Richardson when you met him; he made objections; you thought you had got over his difficulties, and you proceeded accordingly?—Yes.

5267. Sir *William Rae.*] Was Sir David Erskine found as a purchaser for Mr. Richardson, or did Mr. Richardson find him out himself?—He was found.

5268. How did he pay his part of the price?—He granted his bill for it.

5269. Has that been paid?—I cannot speak as to that.

5270. *Chairman.*] Had you any thing to do with that?—Of course, the bill was granted to me.

5271. Sir *William Rae.*] Do you remember the amount of the bill?—I do not; I think it was odds of 300*l.*

5272. Mr. *W. Campbell.*] The short and the long of the account you have given of this is, that you conceived that you had authority from Mr. Richardson to make the purchase for him, and that Mr. Richardson conceived he had not given you such authority?—Just so.

5273. An error exists between you, and neither of you naturally wish to say with whom that error rests?—Yes.

5274. Sir *William Rae.*] Mr. Richardson was inrolled upon this qualification?—I believe he was.

5275. What authority was given for the application for his inrolment?—I suppose the mere circumstance of Mr. Haldane being in possession of the title-deeds; Mr. Haldane might have obtained a mandate, or might not; I cannot speak to that.

5276. Do you know how the expense of the inrolment was defrayed in that case?—No, I do not.

5277. *Lord Advocate.*] You were well acquainted with the state of the constituency of Selkirkshire in 1832?—Tolerably.

5278. Were there any votes at that time that appeared to you objectionable, or created for political purposes?—None existing in 1832 that I was aware of; it never occurred to me to inquire whether there were or not; I never had an idea of such a thing; that was the registration immediately after the Reform Bill.

5279. You consider that registration entirely unobjectionable?—Most unquestionably.

5280. Did you hear any objection made to it of any objectionable qualifications upon it?—Never.

5281. It was after that period that any objectionable votes were made?—Yes.

5282. Can you state to the Committee what gave rise to the making of those objectionable votes?—The thing that naturally presented itself to every one who thought as I did in politics was, that the first thing that gave rise to it was the purchase of the inn at Selkirk, with a view to cut down the majority of the constituency of that county, that appeared to be composed of persons of political opinions adverse to the minority.

5283. If that inn at Selkirk had not been purchased, would you have thought of making such purchases for the purpose of creating political franchises?—Most decidedly not.

5284. Had you ever heard any persons suggest that property should be acquired to make political votes before that inn was purchased?—Never.

5285. Was it then considered a measure of necessity to acquire such votes, in order to maintain the political franchises on the other side, or was it reckoned an advisable measure?—I never heard of any one who considered it an advisable measure to take such means to increase the constituency of that or any other county, but to leave the constituency to its own natural and legitimate course.

5286. Would it have been done in the county of Selkirk, so far as you and your friends were concerned, if that inn had not been purchased?—I think I can take upon me to say, that in the county of Selkirk no one would ever have made any such attempt to increase the constituency of that county; in the first place, so far as the party to which I belong is concerned, there did not appear to exist the slightest necessity; I am well assured, from what I know of the persons who have taken the lead in the politics of that county, that had the constituency, left in its natural state, turned against them, they would have made way for it, and have let those who had a better right come in; that they would not have expended a single farthing in such matters.

5287. Can you state confidently that no steps were taken for making political votes until after that inn was known to be purchased?—None, to my knowledge or belief.

5288. *Chairman.*] In addition to the purchase of the inn, you stated that other purchases were making in other parts of the county before you purchased any yourself?—Yes.

5289. And that you purchased Fairbairn's lands in order to keep them out of the hands of the other party rather than to possess them yourself?—Yes.

5290. Did you attend the registration in 1833?—I did.

5291. Did you witness the votes created, or the qualifications acquired, that year?—Yes.

5292. Was it after that registration you yourself interfered in making purchases?—It was.

5293. Sir *William Rae.*] Do you know any thing of the purchases of qualifications by Thomas Wilson and James Wilson?—I have heard of them.

5294. They are persons in your interest?—Yes; they are whigs, I believe, and supposed to be in our interest.

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5295. Does it consist with your knowledge when this purchase was made?—No, it does not.

5296. If such purchase were made on the 22d of January 1833, would not that be prior to any purchase which was made by the tory party?—I have no documents before me to say when this purchase did take place; I know that it took place in the month of January, but the precise day of January I cannot speak to; therefore, if the purchase of the inn was early in January, of course it must have preceded any purchase that took place on the 22d of January.

5297. *Chairman.*] Do you know the dates of any purchases made by the tory party, registered in 1833?—Not the precise dates.

5298. Sir *William Rae.*] Then how can you say you are certain they mad the first purchases?—So far as my knowledge goes, the first purchase that came to my knowledge, made with a view to a political purpose, was the purchase of this inn, in the month of January.

5299. Do you hold that a *bonâ fide* purchase, with a view to obtaining a freehold qualification, is in itself wrong?—No, I do not know that it is exactly wrong; I do not suppose there is any thing illegal or very sinful in it.

5300. Is it, in your opinion, objectionable on any other ground?—I think there might be circumstances that would make it what I would conceive to be objectionable; I think a writer, a W. S., any person in Edinburgh, or at any very great distance from a county, acquiring a franchise, it would have a suspicious appearance, that he acquired it for some particular object; he having no connexion with the county, I think he would be stepping out of his way in interfering with the county.

5301. The question refers to a man wishing to possess a qualification in a county, which, you say, is, abstractedly, an improper thing?—I think if he had no connexion with the county, merely for the purpose of having a vote in a county in which he had no particular interest, it is what I would not do myself, strongly as I feel in politics, unless I was driven to it by some cause or other.

5302. *Chairman.*] Do you think it an improper interference with the local constituency?—Most undoubtedly, and one that can be justified only on the ground of self-defence; I state that merely as a matter of opinion.

5303. You stated yesterday, that in connexion with that case of Captain Wybergh, you put on his brothers in the county of Roxburgh.

[*The Witness was directed to withdraw.*

It was moved by Viscount *Stormont*, "That it is the opinion of this Committee, that, in order that the evidence shall be clear, consecutive and intelligible, they will take all the evidence upon one county before they proceed to take evidence upon another county."

On which, it was moved by Mr. *W. Campbell*, to leave out the words from the word "that," with a view to insert the words, "it is the opinion of this Committee, that the examination of Mr. Douglas, as to his knowledge of the purchase of votes in Roxburghshire, is in perfect order, and ought to proceed."

Question put, "That the words proposed to be left out stand part of the question," which, on division, was negatived.

AYES.	NOES.
Sir William Rae.	Mr. Dunlop.
Viscount Stormont.	Mr. E. Buller.
Sir Hugh Campbell.	The Lord Advocate.
	Mr. W. Campbell.

Question put, "That it is the opinion of this Committee, that the examination of Mr. Douglas, as to his knowledge of the purchase of votes in Roxburghshire, is in perfect order, and ought to proceed," which passed in the affirmative.

AYES.	NOES.
Mr. Dunlop.	Sir William Rae.
Mr. E. Buller.	Viscount Stormont.
The Lord Advocate.	Sir Hugh Campbell.
Mr. W. Campbell.	

[*The Witness was again called in.*]

5304. *Chairman.*] Is this system of creating votes for political purposes carried to a considerable extent in the county of Roxburgh?—Very considerable.

5305. You

5305. You took a part in creating votes in the county of Roxburgh?—I did.

5306. Was the cause of your commencing in the county of Roxburgh similar to that which induced you to commence in the county of Selkirk?—It was.

5307. Did you know the constituency that voted in Roxburgh in 1832?—I had a general knowledge of them.

5308. Were the persons who voted in that election, persons who resided in or were connected with the county?—They were.

5309. Has a great change taken place in that respect since?—Very considerable.

5310. Have a considerable number of persons non-resident been introduced into the constituency?—I believe there have.

5311. When did that change in the constituency commence?—I believe in 1832.

5312. Do you mean previous to the election of 1832?—Yes, to a certain extent; a change took place to a certain extent previous to the election of 1832.

5313. Did it take place to a considerable extent previous to that election?—As compared to that done afterwards, not considerable.

5314. When did it begin generally?—In 1833.

5315. When did you yourself begin purchasing properties for that purpose in Roxburghshire?—In 1834.

5316. Before that, had the system proceeded to a considerable extent?—Yes to a considerable extent.

5317. You stated yesterday a case on which you had registered the Wyberghs; was that one of the first purchases you made in Roxburghshire?—It was.

5318. What was the name of that property?—I do not think it had any particular name; they were called the lands of the proprietors at that time, such as, Paterson's lands, Donaldson's lands, and so on.

5319. How many were capable of being inrolled upon that property at the time of your purchase?—At the time I purchased that property there might have been nine or ten; nine perhaps; it was capable of affording qualifications to the extent of nine.

5320. To how many persons did you grant conveyances at the time you granted them to the Wyberghs?—I am sure I cannot recollect; I have no note of that.

5321. Was that a property you bought for a political purpose?—I must give a qualified answer to that question; I purchased that property in consequence of having heard that the property immediately adjoining had been purchased by our opponents, by the tories, on which they intended to create as many votes as that property was capable of affording; it was represented to me that the property adjoining, to which I have referred, had been purchased by the political agent of Lord John Scott.

5322. What was his name?—I think Mr. Horne, in connexion with the local agent for the same party, Mr. Curle; and that the party making the purchase were anxious to have the property which I purchased, which was adjoining; I thought it was a pity that they should do so, and made the purchase myself; I cannot say that it was not bought for a political purpose, because I bought it for the purpose, at the time, of preventing its falling into the hands of those persons who I had reason to suppose contemplated turning it to the same account as other property had been turned to.

5323. Did you take the conveyance to yourself?—I did.

5324. Did you take enfeoffment upon the property?—I did.

5325. Did you lay out a considerable sum upon that property in improvements?—I did.

5326. Before you conveyed it away?—I think I had commenced operations in the shape of improvements upon a part of that property, before I conveyed it.

5327. You attended the Registration Court in 1833?—I think I did.

5328. Was it in consequence of what you saw at that Registration Court, that you came to the determination of making votes upon this property?—It was in consequence of an impression upon my mind, amounting to a conviction, that the property adjoining had been turned to that purpose; whether that impression was created in consequence of my having attended the Registration Court, to which reference is made, or from other sources of information, I cannot speak positively.

5329. Was it after the Registration Court of 1833, you came to that resolution of making votes upon that property?—It was after the Registration Court of 1833, most undoubtedly.

5330. Do you remember the sum you paid for that property?—Yes, I do.

5331. How much was it?—I think it would be about 2,100 *l.*, odds of 2,000 *l.*

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5332. You paid that money yourself?—I did.

5333. At the Registration Court those votes were not admitted, because Messrs. Wybergh did not give mandates on which they could be inrolled?—Just so.

5334. And that you had made the conveyance to them, without having their authority to that effect?—The claims were not rejected on the ground of a want of mandate; and I think I explained why a mandate had not, in the first place, been obtained for them, which was, that there had existed an understanding between the agents on both sides, that mandates were not essential; a question arose as to the delivery of the disposition, and on a discussion taking place having reference to the delivery of the title, it did appear that the court were of opinion that I was not fully authorized to make the conveyance in favour of those parties.

5335. You made this conveyance in the month of January 1834?—I did.

5336. Had you previously had any conversation with the Wyberghs on the subject?—I had.

5337. Had you seen them subsequently to that?—I had.

5338. Between the date of the disposition and the time of the inrolment taking place?—I had.

5339. From those communications you conceived that you were justified in considering that they were willing to accept that property?—There was a great number of circumstances and facts connected with that case which, if the Committee wish, I will state, and, so far as I am personally concerned, making it a question personal to myself, I would rather feel obliged to the Committee for affording me a full opportunity of making a statement of all the facts and circumstances connected with that case; but having reference to my friends, I would prefer that the Committee would be satisfied with a general statement.

5340. Was the impression upon your mind, that you had sufficient ground for making that conveyance?—I think that question is answered by my having made the conveyance.

5341. You were examined before the Registration Court upon that point?—I was.

5342. Did you state in the Registration Court the grounds of your conviction?—I did.

5343. Did you state, at the Registration Court, that you had had express authority for doing it?—I never did.

5344. Have any other persons been inrolled upon that property?—There have.

5345. Can you state how many there are?—I think 11.

5346. Are they all inrolled upon that property?—Not upon that property alone, there is other property.

5347. Was not that on the property which you conveyed to the Wyberghs?—I think that property was conveyed to the Wyberghs; the lands of Donaldson and Paterson.

5348. Who are inrolled upon those lands in their room?—I think their names are Henderson, Scott, Ogle, Douglas and Drysdale.

5349. Did you cancel the original conveyance to the Wyberghs, and make a fresh disposition to those five gentlemen?—Yes.

5350. Did you give it them in life-rent?—Yes.

5351. Did they pay you for those life-rents?—Some did, and some granted their bills; some paid me by bill, others by payment in money, and two of the parties have not yet paid, nor granted to me a bill, stating their reason for not doing so was, that they did not wish to grant a bill, but that they should be very soon in circumstances to discharge the debt to me; that they held themselves liable for it; the amount not being large, they considered I did not feel any inconvenience in lying out of my money; that, of course, they would pay, if I insisted upon it, by bill, but that they preferred paying by cash, and I have not since made any application to them; I hold them as my debtors.

5352. Mr. *E. Buller.*] Do they pay you interest upon that money?—Of course.

5353. *Chairman.*] Do you hold the bills from any of them at present?—I do hold one.

5354. Do they pay you interest?—Yes, their agent does.

5355. Who is their agent?—Messrs. Spence & Thomson; they give me credit for the interest out of the rents.

5356. Did

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5356. Did you buy the property of Medlam in that year?—That is one of the properties to which I have been speaking; the lands I have been speaking of are the lands of Paterson.

5357. Do you recollect, previously to that, a property belonging to a man of the name of Hamilton, a supporter of the liberal interest, being bought by the tory party?—That was previous to the election of 1832.

5358. Were the parties who had made that purchase inrolled upon it in 1833?—I believe they were.

5359. Do you remember who they were?—I think there were three votes, if I mistake not, created upon it.

5360. Was Mr. Donald Horne one?—I believe he was.

5361. Was Mr. Ogilvie, of Chester, his brother-in-law, another?—Yes, he was.

5362. Do you recollect the others?—I think there was a Mr. Grainger.

5363. Do you remember a property belonging to a man of the name of Hall, a supporter of the liberal interest, being bought by the tory party?—I recollect there was a property in the parish of Jedburgh purchased from the Rev. Mr. Hall, preacher in Berwick, that was purchased also by the tories.

5364. It was purchased for political purposes?—Certainly, I conceive it was.

5365. Did you buy a property from a man of the name of Symington?—In the Roxburghshire part of Galashiels.

5366. What was the price for that property?—I am sure, I cannot recollect.

5367. Did you pay for it?—Yes.

5368. You managed the disposition yourself?—I am not certain, I think it very probable.

5369. Whose property is that now?—I believe it is the property of persons of the names of Dobson and Deans.

5370. Are those two men inrolled upon it now?—I believe not.

5371. Were they inrolled upon it?—I believe Dobson was.

5372. Did you make the conveyance to them?—Yes, the conveyance was made out to them, by my instruction, by Mr. Haldane.

5373. Did they pay you any part of the purchase-money?—I believe a part of the purchase-money was accounted for by Mr. Haldane, on account of Dobson.

5374. How was the rest accounted for?—The remainder was not paid.

5375. Was there a bill given for it?—No.

5376. No security of any kind?—No.

5377. You hold no security whatever for that portion of the property?—No.

5378. Who occupies it at present?—I cannot recollect.

5379. Do you receive the rents of that property?—No.

5380. Do you look to those parties for the payment of the residue of the purchase-money?—Yes, of course, the persons who are upon the property; Mr. Haldane receives the rent from them, and accounts, of course, to me, or those who hold the promissory note of one individual for the interest; the fact is, that requires some explanation with regard to that person of the name of Deans; Deans instructed me to acquire him a freehold qualification in Roxburghshire, in a conversation I had with him; I did so; when I communicated to Mr. Deans that I had done so, he said, "Very well, but I think the sooner you get another person to purchase the property from me, the better, inasmuch as I contemplate leaving this part of the country," which he did.

5381. Who was that other person whom you got; was it a man of the name of Turnbull?—It was.

5382. A disposition was made out to him of Deans' share of that property?—Yes.

5383. Did he pay you the price?—He granted me his bill.

5384. Do you hold that now?—I do not.

5835. Did that bill bear interest?—It did.

5386. Did you receive interest upon it while it was in your hands?—I did; at least I have no doubt Mr. Haldane received it.

5387. Did you receive value for it when you parted with it?—Yes, full value.

5388. What was the value?—Two hundred or two hundred and twenty pounds; I think odds of two hundred pounds.

5389. Do you hold a bill from Dobson for his share of the purchase-money?—I do not hold it; he granted a bill.

5390. Have you received value for that bill also?—I have.

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5391. Subsequently to the Registration Court of 1834, when those votes were discussed, have you still continued making votes in the county?—Yes.

5392. Do you know that, subsequently to the autumn of 1834, any meetings were held by your party in Roxburghshire, for the purpose of devising means to meet the creation of votes that was going on?—I believe there were.

5393. Have you attended any such meetings?—I have, occasionally.

5394. Was any resolution come to upon the subject?—There was a resolution come to.

5395. At any meeting at which you were present?—Yes, there was a resolution come to to this effect, to do whatever could be done, in order to counteract the proceedings of those who were opposed to us.

5396. When was that resolution come to?—I cannot charge my memory with the date.

5397. Do you know whether there were several meetings before that resolution was come to?—I dare say there might be; but I never knew that there was very much done in consequence of those meetings; I think most of what was done was in general to fix a day to meet again.

5398. No resolution was come to at most of those meetings?—There were various resolutions come to, but the nature of those resolutions I cannot speak to; I know the substance of them, which was, that we were to do very great things to try to counteract that which was going on.

5399. Did you mean that, for that reason, you were to begin a system like that carried on?—Yes, in self-defence.

5400. Were you present when that resolution was come to?—Yes.

5401. What was the date of it?—I cannot recollect the precise date.

5402. Do you recollect meetings that broke up without coming to any express resolution?—Yes, I think there might have been meetings; I attended when that matter was brought under consideration; whether the meeting was convened for the express purpose of devising those matters, I cannot say.

5403. *Lord Advocate.*] Were the previous meetings averse to coming to such a resolution?—Very averse indeed; it was that aversion that was the principal cause of our not coming sooner to something decided in the shape of a resolution; it was their extreme reluctance.

5404. It was that which led to the circumstance you stated, of meetings separating without doing more than fixing a day to meet again?—Yes.

5405. Mr. *Ferguson.*] Did the meeting contemplate making votes in conformity to the Reform Bill, under the sanction and according to the principle of the Reform Bill, or fictitious votes, given to persons having no *bonâ fide* interest in the property?—There never was any resolution of that kind mooted.

5406. It was all done in conformity with and on the principles of the Reform Bill?—I do not know that we had the Reform Act lying before us at the time, having a reference to those votes, but the impression upon my mind, and I conceive the impression upon the mind of every one present, was to resort to the best possible means of counteracting the operations of our opponents, but certainly not to do any thing of a fictitious nature.

5407. Legal means, means authorised by law?—Every means that could be taken.

5408. Nothing fictitious, nothing colourable?—I do not think the question was ever mooted with regard to fictitious votes.

5409. *Chairman.*] The subject of discussion was the votes made by your opponents?—Yes.

5410. Was a resolution come to, to adopt the making similar votes for the purpose of meeting them?—I have no doubt we did avail ourselves of every opportunity we could of counteracting them, every means we conceived in our power.

5411. While you were acting individually had you communications with any party in Roxburghshire on the subject?—No further communications than pressing upon them the absolute necessity of doing so.

5412. Had you their sanction and concurrence?—No.

5413. Had you any communication with the liberal candidate, Admiral Elliott, upon the subject?—I think I had.

5414. Did he express himself agreeable to the system being carried on or averse to it?—Quite the reverse of being agreeable.

5415. Did he remonstrate with you strongly against taking the steps you were taking at that time?—In any conversations that I had with him he condemned out and out the practice and in place of approving of what I was doing, or

taking

taking any part in it, in creating votes in the best way I could, he certainly disapproved of it, and we differed very much in our opinion. *Archibald Douglas, Esq.* 9 March 1837.

5416. You made a great many purchases yourself, you state, both in Roxburghshire and Selkirkshire, for political purposes?—Yes, I did; and I did so expressly at my own risk, entirely upon my own responsibility, without the sanction of either the candidate or any one else connected with our party.

5417. In the purchases which you made were you assisted by any other person with funds?—No, the purchases were made from funds belonging to myself, and money raised on my own individual credit.

5418. Were you encouraged to look for any assistance or remuneration, or do you expect it from any person whatever?—None whatever.

5419. Do you know how many properties you have purchased in Roxburghshire, on which you have made those votes?—Indeed I do not.

5420. But you purchased as many as you could?—Yes, I did, as many as I could.

5421. Are you still going on doing it?—I think I have rather relaxed of late, not from want of inclination, but from want of means.

5422. Mr. *Buller.*] You have no idea of the number of votes that were created in this manner?—There are so many I can scarcely count them; I can furnish the Committee, I have no doubt, with an account of the number of votes I have been concerned in making.

5423. Are they more than 100?—No, not quite.

5424. More than 50?—Very possibly thereabout, I should think, but if the Committee wish, I will furnish them with a very correct account; I am not ashamed of what I have done; I rather glory in showing my zeal for the cause.

5425. Those votes that you have made have been all made in the same manner by purchasing the property, and of selling that property to joint proprietors?—Yes, upon that principle, and upon the principle of granting life-rents in certain cases.

5426. Can you state in what proportion the life-renters are to the joint proprietors?—They bear a very small proportion indeed.

5427. In all those cases you have invariably received consideration for the interests you have conveyed to the parties?—I have.

5428. Either immediately or by bill, or by letter acknowledging the debt?—Every one; I know of none where I have not actually received what I conceived myself entitled to by virtue of conveying the necessary qualification, either by money or by bill, or by a letter, which I conceived sufficient, considering the nature of the situation of the parties, and there is scarcely an instance to the contrary; I thought it was unnecessary for me to press further.

5429. They have been all *bonâ fide* transactions?—They have been all *bonâ fide* transactions.

5430. And you have received a fair value for the property you transferred to the parties?—I have received what I considered a fair value; and if I did not consider that I had received the fair value, or what was tantamount to it, the Committee may rest assured they should not be very long in possession of that property.

5431. Mr. *Ferguson.*] A return, in point of fact, if made in a letter, you would not consider as value received for the amount of the property that you transferred to any other person?—That involves really a nice question, according to my opinion; I do not pretend to be a lawyer, but I think I could make out a case where I could be pretty safe, even under those circumstances; supposing I conveyed to the Honourable Member, which I should be happy to do, a certain subject, and granted him a disposition to that subject, and he acknowledged himself my debtor, I think that, without a great deal of legal ingenuity, I could compel him to pay or give up the property; and having that impression, I am satisfied.

5432. *Chairman.*] Do you mean where persons are in the higher station of life you consider a letter as sufficient?—Yes, I should consider their word as their bond; I never had a transaction with any individual connected with the properties or transactions that have been so frequently referred to to-day, that I would not have considered, if it were necessary, their word equal to their bond or their money.

5433. You were asked, in the former part of the day, whether it was your object to give persons real qualifications, or solely such as would allow them to get on the roll; you answered, that your first object was to give qualifications, but your great object to make them pass muster?—That was my great object.

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5434. Did you give votes where persons passed muster without their being entitled to the qualifications they obtained?—I conceive not.

5435. There was property where seven persons were inrolled, Richard Balman, James Wilson and five others; what was the nature of that property?—I cannot say.

5436. Is that a property you have referred to to-day?—No.

5437. Is that a property you bought?—It is a property I instructed to be bought.

5438. Did you pay for it?—I did.

5439. The conveyance was made out to those seven individuals?—I suppose the same course was pursued in respect to that property as to others; I cannot say whether the disposition was taken by myself first and made to him.

5440. Was it given in life-rent or in fee?—In fee.

5441. Did you receive a consideration?—Yes.

5442. Who was your agent in that?—Mr. Mayne.

5443. Do you recollect the amount of the purchase-money?—No.

5444. Did they give you bills or cash?—It was partly both.

5445. Do you hold any of those bills at present?—I am sorry to say I do.

5446. Has interest been paid upon them?—Regularly.

5447. How many of the parties gave you bills?—I cannot speak positively; the transactions of that kind were very numerous, and unless I had time to look into them I could not say.

5448. There were three individuals, Andrew Bulman, David Swainston and Alexander Tait; were those individuals inrolled upon a property of your purchasing?—I think one, perhaps two; I can speak positively to one purchasing a property I was connected with.

5449. Did you purchase the property, in the first instance?—Yes, or through my instructions; the same principle applies in all those cases.

5450. In all those cases in which you have been engaged in the purchase of property, you made them over in the same manner?—Yes; if the Committee get the facts connected with one case, they will have the facts connected with the whole.

5451. There was a case of Thomas Jameson, David Rutherford and Alexander Kerr; was that a property of your purchasing?—I dare say I had something to do with it.

5452. Did you pay the purchase-money?—Yes, I did.

5453. Was it repaid by those individuals in cash or in bills?—Partly in both; I took the cash which they had, and where it was not convenient I took their bills, some at three days' date, and I got value for those bills.

5454. Did you receive interest on those bills while they were in your possession?—Yes.

5455. There was a case where 10 individuals became possessed of property, William Douglas, flesher, John Taite, and John Haldane and others, do you recollect that property?—I cannot call that to mind.

5456. Mr. *Ferguson.*] Generally speaking, have you lost or gained by these transactions?—Neither one nor the other.

5457. You have made no sacrifice?—No, I took care generally not to come at a loss; I might on some transactions, but I took pretty good care not to lose by it; I do not think I have any merit or demerit in that transaction.

5458. Do you recollect any property in Hawick which you bought, which was conveyed to 10 individuals?—No, none in the district of Hawick, certainly.

5459. Do you recollect any other property you paid for, in the first instance, on which other individuals were afterwards inrolled?—Yes, I recollect a considerable number; I dare say I can enumerate them; I would simply state, that whenever this was done, I gave explicit instructions, and the money was advanced, either from my funds or raised on my own individual credit, and that I was afterwards reimbursed by the party.

5460. Having purchased them, you got individuals to take them and be inrolled upon them?—Yes.

5461. *Lord Advocate.*] You have stated that you were averse to purchasing lands for votes in the county of Selkirk, were you equally so in the county of Roxburgh?—Yes.

5462. What

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5462. What were the circumstances which induced you to acquire land for that purpose in the county of Roxburgh?—The knowledge of the absolute necessity of so doing, in order to protect the majority, which was attempted to be cut down by our opponents, from their resorting to the purchase of property with that view.

5463. Were you fully aware that your opponents in the county of Roxburgh had acquired property with that view, and created votes before you did so?—I conceive I was perfectly satisfied that they had done so.

5464. You proceeded on that belief?—I did, and that belief alone.

5465. Would you ever have done that, if you had not believed it had been previously done by the other party?—No, it was not likely that we should, for we had in Roxburgh a very decided majority; I do not mean that that would prevent the thing occurring to my mind, but I am satisfied nothing would have induced me to resort to such practices, if it had not been on the score of self-defence.

5466. To the best of your knowledge, would any other persons on your side in that county have done it, but for its having been done by the other party?—I think I am fully justified in saying that they would not; for I do not see why they should have done it.

5467. Can you state when it was first done by the other party?—I think the first instance was the purchasing up a property in the parish of Anerum, from a man of the name of Hamilton or Flamerton, in Edinburgh, previous to the election of 1832; then there was the property purchased of a man of the name of Hall, in or near the village of Lantern, the proprietor residing in Berwick, I believe.

5468. Mr. *E. Buller.*] Were any number of joint proprietors inrolled upon those properties?—I think there were upon both; I cannot enumerate the names inrolled upon the property of Hamilton, but under that purchased near the village of Lantern, there were three, which I would call very suspicious political characters, inrolled; acquaintances of my own, men for whom I have in private a very great respect; Mr. Wood, agent for Lord John Scott, the Provost of Jedburgh, and some other individual connected with the burgh politics of Jedburgh; when I say suspicious, I mean politically.

5469. You are satisfied from that, they were bought for a political purpose?—Yes; nobody could doubt that.

5470. *Chairman.*] Was Mr. Donald Horne inrolled on the property bought of Hamilton?—Yes; and a man of the name of Davis, I think, or two Davis's.

5471. Sir *William Rae.*] You reside in Roxburghshire?—I do.

5472. Your estate is in Roxburghshire?—It is.

5473. What property, independently of those purchases, had you in Selkirkshire?—I can boast of nothing but an old parchment vote in Selkirkshire; but I am connected with the county.

5474. Holding the opinions you gave some time ago, that purchasing a vote, merely for the purpose of the franchise, was not a very proper proceeding, how do you reconcile your own numerous purchases in the county of Selkirk?—Perfectly well; I stated it was only under certain circumstances that an individual could be justified in stepping out of one county into another to acquire property, on the score of self-defence, finding that the parties opposed to him were doing so; it was on the principle of self-defence alone I would do it.

5475. *Chairman.*] Do you live close to the county of Selkirk?—I do, and feel great interest in it, and have a just right to do that.

5476. Are you a good deal in that county?—Yes.

5477. Are you connected with the landed proprietors in that county?—I am connected with, I believe, one of the principal landed proprietors in that county.

5478. Viscount *Stormont.*] Did you subscribe the petition presented to the House of Commons from Selkirkshire, complaining that those votes were made in that county?—I am sorry to say, that as far as any little consequence might be attached to the petition by the signature of so humble an individual, I had not an opportunity of so doing; I did so in Roxburghshire.

Mr. *Adam Paterson*, again called in; and further Examined.

Mr. *A. Paterson.*

5479. *Chairman.*] HAVE you prepared the tables you were directed yesterday to make out?—I have.

[*The same were delivered in, and read as follows*:]

Mr. *A. Paterson.*

9 March 1837.

TABLE showing the POLLING of the VOTERS inrolled in 1832.

ELECTION, 1832.			Number for Whitebank.	Polled for Clifton.
District of Selkirk			103	82
„ Galashiels			21	51
State of poll in 1832			124	133
ELECTION, 1835.				
Voters who were absent or neutral in 1832, who voted in 1835			6	4
	For Whitebank.	For Clifton.		
District of Selkirk:—			130	137
Neutral or absent in 1835, who voted in 1832	11	5		
Changed sides	1	1		
Expunged from roll	13	23		
District of Galashiels:—				
Do. do.	1	8		
Total number who voted in 1832, and not in 1835	26	37	26	37
Leaves of the constituency of 1832, who voted in 1835			104	100

Note.—From the above table, it appears that thirty-one of Clifton's and fourteen of Whitebank's supporters were expunged from the roll between 1832 and 1835. Of the thirty-one of Clifton's voters, eleven were disfranchised by the opposite party purchasing up their properties; and of the fourteen of Whitebank's supporters, one was disfranchised by the same means. It thus appears, that if the constituency of 1832 had not been interfered with, Mr. Pringle, of Clifton, would have had a majority of six upon that constituency at the election of 1835. The difference of three between that and his majority of nine in 1832 is accounted for by the operation of ordinary causes, *e. g.* the greater number of deaths on the one side than on the other.

Adam Paterson.

LIST of Mr. PRINGLE's (of Clifton) Supporters at the Election in 1832, who were disfranchised before the Election of 1835, by the opposite Party purchasing up their Properties:

1. James Ballantyne	Property purchased by	George Scott.
2. George Hogg	ditto	T. R. Scott, Glendoylas.
3. Andrew Heally	ditto	Robert Ballantyne, Carterhaugh.
4. Andrew Hope Mason	ditto	Geo. Cole Bainbridge, Liverpool.
5. Thomas Nicol	ditto	Francis Binnie, Bowhill.
6. William Paterson	ditto	John Mathieson, ditto.
7. Ebenezer Robertson	ditto	R. Anderson and J. & G. Olivers.
8. John Sheels	ditto	John Forrest, Danielton.
9. Thomas Scott	ditto	Henry Burn, R. S., & four others.
10. William Tweedie	ditto	Robert Paton, Writer, Selkirk.
11. J. Dickson	ditto	Alex. Crichton & A. R. Maxwell.

5480. You state that a number of Mr. Pringle's (of Clifton) voters had been disfranchised by the purchases made by their opponents?—Yes.

5481. You state that but for those purchases, the majority upon the old roll would have been different?—Yes; but for those purchases, the majority of voters inrolled in 1832, who voted in 1835, would have given a majority of seven for Mr. Pringle, of Clifton.

5482. Were those purchases made for political purposes?—Solely; as far as I know.

5483. Were the purchases made at a tempting price to the sellers?—Yes; no doubt they were.

5484. Sir

5484. Sir *William Rae.*] What were the purchases?—I will furnish a list of them, if it is called for.

5485. *Chairman.*] Those purchases were in consequence of the system which has been referred to?—Yes.

5486. Sir *William Rae.*] How do you know that?—I know it from various circumstances; particularly from the politics of the party and other circumstances leading me to infer that it was only for a political purpose that they made those purchases.

5487. *Chairman.*] Were they made by the political agent for the tory party?—They were.

5488. Sir *William Rae.*] Will you state the names?—The following voters for Mr. Pringle, of Clifton, in 1832, were disfranchised by purchases made by the supporters of Mr. Pringle of Whitebank, in the district of Galashiels; J. Dixon, who was superseded by the two chamberlains of the Duke of Buccleuch, Alexander Harley Maxwell and Thomas Crichton.

5489. What was the description of the property?—Long leasehold.

5490. What was the price of that?—I cannot tell the price; it would be between 300 *l.* and 400 *l.*, I apprehend.

5491. Was that by public sale or private bargain?—By private bargain.

5492. Was the property known to be in the market?—No.

5493. *Chairman.*] Was it a good investment?—I cannot tell, but I should think it was dear.

5494. Viscount *Stormont.*] Why should you think it was dear?—Because Mr. Haldane, who knew the property well, told me so, either at the time or afterwards.

5495. By whom was it bought?—By Curle & Erskine, the political agents for the tory party.

5496. In another county?—Yes.

5497. Were Curle & Erskine the Duke of Buccleuch's private agents?—They were his political agents.

5498. How do you know that the Duke of Buccleuch has any political agents?—I mean that they act as political agents for the party whom the Duke of Buccleuch supports; they acted as agents for the Duke of Buccleuch's brother, Lord John Scott, in the county of Roxburgh.

5499. Does that make them political agents for the Duke of Buccleuch?—I will correct my answer by saying, that they were political agents for the Duke of Buccleuch's brother.

5500. *Chairman.*] The purchasers were persons living in the county of Roxburgh, where Curle & Erskine reside?—In Roxburghshire and Dumfries-shire.

5501. Viscount *Stormont.*] Mr. Crichton is a gentleman of property, is not he?—It is Mr. Crichton, of Auhieshook, he is chamberlain to the Duke of Buccleuch.

5502. *Chairman.*] Do you suppose that the value of that property was barely sufficient to give two 10*l.* franchises?—Yes; they had great difficulty in establishing their claims on account of the value.

5503. What was the next case?—The next was the case of James Ballantyne; his property was bought up by a person of the name of George Scott.

5504. Was that a transaction for a political purpose?—I believe it was; I understood from Mr. Haldane that Scott had borrowed money from Mr. Rodger to pay the price.

5505. Was Mr. Rodger the agent who conducted the transaction?—I believe he was.

5506. Is Mr. Scott a flesher?—I believe he is.

5507. Viscount *Stormont.*] Did he pay too much for that property, or was it a good investment?—I cannot say.

5508. You stated a greater sum was paid for those properties than they were worth?—I understood generally that all those purchases were made at very high prices.

5509. Was this property individually purchased at too high a price?—I cannot state from my own knowledge, but I was so informed by Mr. Haldane.

5510. Is Mr. Haldane the only authority you have for saying that those properties were generally purchased at too high a price?—Yes.

5511. Have you any other authority?—I heard generally, at the time, that the purchases were made at high prices, and I know of the rise of property in consequence of these purchases, and of political contests.

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5512. How do you know that?—The parties who did this were decided partisans, and it did not appear they could have done this for investment; they did not reside on the property, nor had they any facilities for managing it, and the purchases were made by the agent of the tory party.

5513. Does Scott reside upon his property?—I am not aware.

5514. Is he not a flesher?—I believe he is.

5515. Does not he carry on the business of a flesher on that property?—I cannot state; I do not know the man.

5516. You have stated the men did not reside on their properties?—I say so, generally; there may be a single exception.

5517. Is his an exception to that case, or not?—I cannot say; I know most of the other gentlemen are non-resident, but I cannot tell as to Scott.

5518. If he is resident he does not fall under that denomination of persons who have purchased property for the mere purpose of making votes?—No, but residence alone is not the only test of a purchase not having been made for a political purpose.

5519. What are the other tests?—I have already mentioned several of them, for example, that the party is a keen partisan, and that money was advanced by the tory party.

5520. Was Scott a keen partisan?—I have understood so from Mr. Haldane.

5521. Do you know it as a fact?—Not of my own knowledge.

5522. Did Scott borrow all the money for the property?—I am not aware that he did, but I understood from Mr. Haldane that he borrowed money upon the property.

5523. Do you know any thing on the subject yourself?—On this particular subject of the vote of Scott I cannot speak from my own knowledge.

5524. *Chairman.*] You and Mr. Haldane are both political agents for Selkirkshire?—Yes.

5525. Have you your particular district?—No; we act in both districts.

5526. Is Mr. Haldane better acquainted with the particular district than you are?—Yes, much better; he is resident; he knows the property on which they are inrolled, and the circumstances of the party, and the probable cause of their acquiring a vote.

5527. You go over the matter with Mr. Haldane, and trust a great deal to his local information?—I do.

5528. Viscount *Stormont.*] Do you know this house of Scott's?—No, I do not.

5529. *Chairman.*] Mention the next case?—The next case is that of Andrew Heally; his property was bought up by Robert Ballantyne, of Carterhaugh.

5530. Does Mr. Ballantyne reside upon that property?—No, he resides at Carterhaugh.

5531. Is that in the county?—Yes.

5532. Who was the agent in that transaction?—I cannot speak from my own knowledge.

5533. You do not know whether it was a political agent of the party?—No.

5534. Can you state whether it was acquired for a political purpose?—I cannot say so from my own knowledge; but Mr. Haldane, who was better informed on the subject, told me so.

5535. Sir *William Rae.*] Was that a private sale?—I cannot say; I believe so.

5536. Did you know any thing of those sales at the time they were made?—I was not agent in the county at the time of those sales.

5537. Viscount *Stormont.*] Can you state any cases where, of your own knowledge, you know that those properties were bought for political purposes, and that higher prices were given for them than the properties were worth?—I can only answer, that I am perfectly convinced that all the purchases were made for political purposes; and I may give as an instance, that upon one of the properties purchased from a person of the name of Ebenezer Robertson, there were two voters afterwards inrolled, who were both political agents for the tory party in Roxburghshire; viz., Mr. Robert Anderson and Mr. George Oliver, both writers in Hawick; but I cannot, of my own knowledge, state that the purchases were made at prices beyond their value; I would also refer to the cases of Thomas Nicholl and William Paterson, the former of whose property was bought up by Francis Binnie, of Bow-hill, and the latter by John Mathieson, gardener, of Bow-hill, both, in my opinion, entirely for the franchise.

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5538. Did they pay a higher price than the property was worth?—I cannot say of my own knowledge that they did.

5539. Can you point out one single instance where you can say the property was purchased for a higher price than the property was worth?—I cannot give an opinion as to the value of the property; but I have already given an opinion, that the property was purchased wholly for the franchise.

5540. You stated that you considered that those were bought for political purposes, because a higher price was given for the properties than they were worth; which of those properties came under that description you have so given?—I speak from the information of Mr. Haldane, whom I consider a very good judge of the value of every property, both in Selkirk and in the town of Galashiels.

5541. Do you speak from your own knowledge as to any single property?—Not as to the value, as compared with the price paid.

5542. It is only on the representation of Mr. Haldane that you give this opinion?—Yes, in reference to value.

5543. Mr. *William Campbell.*] You have acted as joint political agent with Mr. Haldane?—I have.

5544. During the time you have been in communication with him, he has given you, at different times, various information?—Yes.

5545. Did you find his information to be correct?—Yes, in every instance.

5546. Having believed him, and found his information was correct in other instances, you believe this statement that these properties were bought at prices higher than they were worth?—I do.

5547. Sir *William Rae.*] Did Mr. Haldane say that all those purchases were made at prices beyond their value?—He stated to me that the purchases generally were at prices beyond their value; and he stated that the votes were acquired entirely for the franchise.

5548. Viscount *Stormont.*] Do you know any thing yourself on that subject?—Yes; I know from the connexion of the parties and other circumstances, that the purchase was made for a political purpose.

5549. Sir *William Rae.*] Did Mr. Haldane apply that objection with respect to the value to all the purchases, that they were all purchased at prices beyond their value?—He stated generally, that all those purchases had been made at a high price.

5550. Were those in one conversation, or were those sales the subject of general conversation with you?—Mr. Haldane and I had repeated conversations upon the subject of the purchases, but he particularly picked out those parties from the rest of the disfranchised voters, and stated that he considered those acquired entirely for the sake of the franchise.

5551. Did he make out that list?—I wrote down, in going over the list, those that he considered had acquired their votes for the franchise.

5552. In his presence?—Yes.

5553. When?—Yesterday.

5554. *Chairman.*] Was that done in consequence of a question that was asked you?—Yes.

5555. You got Mr. Haldane to assist you in making out that statement yesterday?—Yes.

5556. Sir *William Rae.*] If you had been interrogated upon this subject the day before yesterday, you could not have answered?—I could have answered that the disfranchised voters had been superseded by the others, and that those others were political partisans.

5557. But that could not have had any thing to do with the value of the properties?—I could not say any thing as to the value of property; I could have spoken generally; for Mr. Haldane had before told me of the great rise in the value of property, in consequence of the political purchases.

5558. *Chairman.*] The properties bought for political purposes were generally bought at an increased value, were they not?—They were, on both sides.

5559. Mr. *Ferguson.*] Do you attribute the majority of Mr. Pringle, of Whitebank, to those purchases; might not a conviction have come over the minds of those persons?—No; for there was no change in the voting.

Veneris, 10° *die Martii*, 1837.

MEMBERS PRESENT.

Lord Advocate.	Sir William Rae.
Viscount Stormont.	Mr. Ferguson.
Sir Hugh Campbell.	Mr. Divett.
Mr. W. Campbell.	

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. *Adam Paterson*, again called in; and further Examined.

Mr. *A. Paterson.*
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5560. *Chairman.*] HAVE you brought with you the papers to which you have referred in your evidence?—I have brought with me the deed of settlement of William Aicheson, of Linhope, the contract of sale between Ebenezer Beattie and John Alexander Pringle; the extracts from the minute-book of the register of sasines, showing the 56 gentlemen who had acquired life-rents over the property of the Dalgleishes, and the extracts from the minute-book of the register of sasines, showing the heritable debts upon that property.

[*The same were delivered in.*]

[*The Witness withdrew.*

Mr. *Donald Horne*, called in; and Examined.

Mr. *Donald Horne.*

5561. *Chairman.*] YOU are a writer to the signet in Edinburgh?—I am.

5562. Did you act as political agent for the tory party in Selkirkshire?—I acted as the professional agent for Mr. Pringle, of Whitebank, and the conservatives in that county.

5563. When were you appointed agent?—In January 1833.

5564. Was it previous or subsequent to the election of 1833?—The election was about Christmas 1832.

5565. You are political agent also in the neighbouring county of Roxburgh, are you not?—I am, for Lord John Scott.

5566. Were you appointed about the same time for that county?—I was engaged subsequently, but about the same time, that is to say, in the month of January.

5567. Do you remember the number of the constituency you found on the roll when you came into Selkirkshire in 1833?—Very well.

5568. Were they principally persons resident in the county?—The total constituency amounted to 280; and of those there were 91 non-resident.

5569. Can you classify them and state how many there were of each kind of voters?—The constituency was 280; there were single proprietors, including the old freeholders, 123; life-renters, 11; I count in life-renters, of course, the clergymen and schoolmasters.

5570. How many joint proprietors were there?—Four; there were single tenants under long leases, 37; there are two qualifications, those which I call long leases are for 57 years; joint tenants on long leases, 17; single tenants, under the tenancy qualification of 50 *l.* rent, 72; joint tenants under the 50 *l.* qualification, 16; making 280; I have not the claims lodged in 1832, and I cannot be certain of the number under each qualification registered for that year; but the abstract is as correct as my information enables me to state it.

5571. You have classed all the old roll under the single proprietors; would not they have come more properly under life-renters?—I have never seen their claims and do not know whether any of them were registered as life-renters; there were under

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under the old qualification, a qualification of life-rent, as well as a qualification of fee.

5572. Was not the old qualification more commonly a life-rent qualification?—Certainly not a life-rent qualification; the ordinary qualification in counties was generally as proprietors.

5573. Mr. *W. Campbell.*] You state there were 91 non-resident in a constituency of 280; can you state whether that was amongst the old freeholders upon the paper qualification or the proprietors?—Of the 91, I think there were 34 old freeholders; but I cannot speak with perfect accuracy.

5574. *Chairman.*] Do you remember the total number of the old freeholders?—No, I do not remember; they were classed in their parishes when the new register was made up.

5575. Was not there also a roll kept of the old freeholders?—Yes, but I never knew of its having been published.

5576. Was not it published regularly in the Edinburgh Almanack?—No, I think only those that were commissioners or justices of the peace.

5577. Can you state as to the remaining number of the non-residents, under what head they came?—I have a list here; in order to be more certain, Mr. Rodger has examined it with me, and certified it; they came under the heads of 10*l.* owners, long leaseholders and agricultural tenants.

5578. Can you specify how many of each?—I can make out a list of the whole, but I cannot distinguish them at this moment.

5579. A great majority of the constituency in the year 1832 appears to have been resident in the county?—Yes.

5580. Were the persons on the roll on that occasion almost universally persons that were interested in the county and connected with it?—Yes, they had property in the county, and were commonly connected with it, and I presume they all had property in it, if they were registered.

5581. Were they persons whom you consider as locally connected with the county?—It is only from their designations, I can generally answer to that; there is, for instance, Alexander Cameron, of Dundee, registered; of course he had property in the county.

5582. Were the persons on the roll at that moment persons who had a considerable interest in the county of Selkirk, and principally connected with it?—I cannot say positively, but generally they all had an interest in the county of Selkirk.

5583. Did you go down to the county of Selkirk soon after you were employed by Mr. Pringle?—My employment by Mr. Pringle was by an interview at Edinburgh; he furnished me with a variety of documents to enable me to examine the state of the roll; I had frequent communications with the counsel employed, and after the examination I had made, the conviction on my mind was, that Mr. Pringle, of Whitebank, ought to have been the sitting Member for the county, and that there was ground for a petition; my first investigations were directed to that point, and following out those investigations, I went down to the county of Selkirk about the 21st or 22d of January.

5584. When you went down on that occasion, did you commence making any purchases of properties?—None.

5585. Did you make any on that occasion while you were there?—I did not; my investigation on that occasion was with reference to the rejected electors, who had voted at the election under protest, and also in regard to the qualifications of some of those who had been registered.

5586. On that occasion you did not make any purchases?—Certainly not.

5587. Had you any contemplation of making purchases at that time?—My firm belief at that time was that it was not necessary for Mr. Pringle's (of Whitebank) party to make purchases.

5588. You did not at that time contemplate making purchases?—Certainly not.

5589. Had you had any communication with any individual on the subject of making purchases?—Except Mr. Pringle, of Whitebank, I had no communication with any individual; when I went down first, Mr. Pringle, of Whitebank, went to Mr. Rodger's office and introduced me to Mr. Rodger, I having no previous professional or personal acquaintance with Mr. Rodger; but Mr. Pringle communicated to me the information that some of his friends in the county apprehended that his opponents were contemplating the making of purchases.

5590. Did he communicate that in Selkirk?—No, he communicated it in Edinburgh before I went down.

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5591. Was that long before?—It must have been about a week before.

5592. Sir *William Rae.*] Was that communication at all special?—I do not recollect the particulars of it, any further than that Mr. Pringle told me that it came from the opposite party, that they intended making purchases largely, because the county was too nearly balanced.

5593. He did not say how he had obtained that information?—I do not recollect that he did.

5594. How long did you stay in the county at that time?—Only that afternoon, I think.

5595. Did you return to Edinburgh?—If it was the 22d I returned to Edinburgh.

5596. At the time you left Selkirkshire, you had still not contemplated making any purchases?—I not only had not contemplated, but I was convinced that it was not necessary, from an examination of the register, and from the known fact of those who were absent at the election being chiefly in the conservative interest; I have made up an abstract of them; there were 23 absent at the election; and the majority, which consisted of only nine, would have been turned into a majority for the conservative interest; Mr. Pringle's (of Whitebank) interest.

5597. Sir *William Rae.*] Was there any addition to the roll of persons who had been previously rejected?—In 1833 there were several who were added to the roll, who had been rejected in 1832, and several expunged from the roll, without any change of circumstances, who had been registered in 1832.

5598. Supposing the roll had been so rectified at the election of 1832, by adding those who had been improperly struck off, and striking off those who had been improperly inrolled, what would have been the result of the election as between the two parties?—The majority in favour of Mr. Pringle, of Whitebank, would have been about the same as the majority in 1832 in favour of Mr. Pringle, of Clifton, was; it would have been eight, I think.

5599. *Chairman.*] You came to that conclusion at that time?—I did; and I strongly recommended a trial of the case in the House of Commons.

5600. Was it tried in the House of Commons?—No, it was not.

5601. How came it not to be?—Perhaps the expense.

5602. Mr. Pringle asked you to make this inquiry, with a view to ascertaining whether a case could be proved before the House of Commons?—Mr. Pringle did not specially direct my attention to that; but in investigating the state of the roll that was the result.

5603. Did you not state, that when you went down to Selkirkshire, you went down at Mr. Pringle's request, in order to ascertain whether there were not grounds for a petition?—I had been employed by Mr. Pringle as agent; I had no special instructions what I was to do when I went down; I was to investigate into the state of the roll; and I had to inquire into the number of those who had voted under protest, and those who had not voted under protest; and I found some of ours had not voted under protest; therefore, though their claims might be held good in 1833, they could not be put on in 1832.

5604. Was not your object in going down to discover whether there was ground for a petition to Parliament?—To discover the state of the roll.

5605. Was your object in that investigation to ascertain whether there was ground for a petition to Parliament?—I had received no express instructions with regard to a petition to Parliament; my object in going down was to ascertain the exact state of the constituency, and to see whether there was room for a petition to Parliament, or whether those that had been registered in 1832 had been correctly registered, and whether it was necessary to correct the deeds of any of those claimants which had been rejected in 1832.

5606. Before you went down, had you any conversation with Mr. Pringle as to the probability of his carrying the matter before Parliament?—I do not recollect; I had frequent conversations with Mr. Pringle, in Edinburgh.

5607. You found, on that occasion, it was not necessary on your part to resort to any purchases in order to strengthen your interest?—Certainly.

5608. Did you communicate that to Mr. Pringle and Mr. Rodger, as your opinion?—No, I do not think I had an opportunity of communicating it to Mr. Pringle; but the circumstances were the subject of conversation with Mr. Rodger.

5609. At that time, when you and Mr. Pringle and Mr. Rodger were together, you did not come to any resolution as to the purchase of property?—Mr. Pringle introduced me to Mr. Rodger, and left us.

5610. Had

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5610. Had you any conversation with Mr. Rodger as to the purchase of property?—There might have been some conversation with him as to the properties which might be obtained; but there was no resolution to purchase, or to take any steps connected with that; I had no authority from any individual at that time to purchase.

5611. The subject of purchasing had been mentioned?—It is probable Mr. Rodger and I may have referred to a communication which had been made to Mr. Pringle, that some of the opposite party had declared that they must purchase, because their majority was too small.

5612. Sir *William Rae.*] Could this inquiry have been made equally efficiently any where else as at Selkirk?—Certainly not.

5613. Why not?—Because the documents were lying at Selkirk; the local agent was in Selkirk, and there were a number of inquiries which I could not suggest till I was on the spot.

5614. *Chairman.*] What were those inquiries?—Objections to other voters who had been registered.

5615. On the score of value?—No, on the score of title, and also in point of law.

5616. Were those inquiries that could not be conducted except on the spot?—Certainly not, where the local information could be obtained.

5617. Did you go to Selkirk again?—Yes, on the 25th of January.

5618. On that occasion, did you commence purchasing properties?—Yes.

5619. Which was the first property you purchased?—The first property that was purchased was the property of the inn.

5620. Did you have any communication with Mr. Rodger between the day of your leaving Selkirk and the day of your return to it?—I do not think I had.

5621. What was the date of the purchase of the inn?—The 25th.

5622. You purchased it the day you came down?—Yes.

5623. Was there a missive of sale upon that occasion?—There was a memorandum of sale; I do not know that I can call it a missive.

5624. Did you purchase it yourself?—Yes.

5625. From Mr. Wilson?—Yes, from Mr. Wilson, who was thereby disqualified; he was a conservative.

5626. On that occasion did you commence the transaction with Mr. Wilson?—Yes, and a very tedious one it was; he asked a very high price.

5627. What was the price he asked?—I forget exactly; but I think he began at 2,600*l.* or 2,700*l.*

5628. What was it that you gave him?—I gave him 1,095*l.*, and he was to receive an annual payment from the purchaser, of, I think, 30*l.*; he was an old man.

5629. Previous to your arrival, had there been no communication with Mr. Wilson, on the subject of his purchase?—Not to my knowledge, I had none.

5630. You commenced the transaction with him, without any reference to any thing which had taken place before with him, or to any offer or communication by any other person to him?—I commenced it purely as a new transaction.

5631. Sir *William Rae.*] Was the property in the market?—The property was sunk in debt, and I believe, almost I may say, in the hands of heritable creditors.

5632. *Chairman.*] What was the debt?—The heritable debt was 1,680*l.* besides interest, I think.

5633. Sir *William Rae.*] Was it known to be in the market?—I believe it was; it was known by those in Selkirk to have been in the market some time.

5634. *Chairman.*] Do you know whether Mr. Rodger had had any communication with Mr. Wilson on the subject of this inn?—It is probable Mr. Rodger might have been inquiring for properties that were for sale, and whether the opposite party were purchasing properties.

5635. You are not aware of his having made any offer or attempt to purchase this property before your arrival?—If he had made any offer, it was without any authority from me, and unknown to me; I had received authority before I came out on the 25th, from the purchasers, to make a bargain for them.

5636. When you made the purchase you took a disposition to a number of gentlemen, did you not?—Yes.

5637. The number was ten, was it not?—Yes.

5638. Most of them were gentlemen connected with the law?—Mr. Chisholme is a landed proprietor in the neighbouring county of Roxburgh, Mr. Scott Moncrief has given up the law now; he is brother-in-law to Mr. Pringle, of Whitebank.

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5639. What is Mr. Piper?—He is contractor for the mail-coaches.

5640. Are any of the others connected with the law?—Except Mr. Finlay, he was brought up to the law; he is now in charge of an insurance company.

5641. He is a writer to the signet?—Yes.

5642. They are all non-resident?—Yes.

5643. You came down on the 25th with authority from those ten individuals to purchase a property for them?—Yes, I do not wish to be understood to say that I had a written authority from any of them; I had authority from them to purchase; I saw almost all of them except Mr. Piper myself, and I had authority from each except Mr. Chisholme.

5644. All the others but Mr. Piper and Mr. Chisholme you saw?—Mr. Potts, of Hawick, I do not recollect that I did see him; Mr. William Scott and his son, I cannot say at this time whether I saw them both, but I got authority from either the one or the other.

5645. What was the nature of the authority?—The nature of the authority was, to purchase property at a fair price, that would afford a franchise.

5646. They did not give you authority to buy the inn at Selkirk particularly?—I really cannot recollect; I do not think they did; I was not sure that I could get the inn at Selkirk at that time.

5647. You came down with their authority to buy them properties in the county of Selkirk, on which they could acquire the right of voting?—Yes, the best investment.

5648. From six or seven of those individuals you got that authority personally?—Yes.

5649. Was that in consequence of your suggesting to them those purchases, or was it a request of theirs to you upon it?—To some of them I certainly suggested it, having received previous advice that the opposite party had made a purchase in the county.

5650. Did you not suggest it to all?—No; I think some of them were just as anxious upon the subject as was necessary.

5651. You had received previous advice that the opposite party were making purchases?—Yes.

5652. And that it was necessary for you to make purchases?—I did not know to what extent it might be carried.

5653. You had received advice which satisfied you it was necessary to make purchases?—I had received advice which satisfied me that it was advisable to make purchases.

5654. That advice you received between the 23d and the 25th?—I received that advice late in the evening of the 22d, or early on the 23d.

5655. Were you in Edinburgh?—I know I was advised by post in Edinburgh, but whether I had heard it previously I cannot say, but I was in Edinburgh on the 23d.

5656. Do you know from whom you received that advice?—I received that advice from Mr. Craig, of Galashiels.

5657. It was in consequence of that advice that you suggested to these gentlemen to make purchases in the county of Selkirk?—Yes.

5658. And you went down to the county of Selkirk immediately afterwards, and commenced making purchases?—Yes.

5659. At the time you went down, when you commenced the transaction of the inn at Selkirk, did you go without any previous intention of buying that property?—I had no previous intention of buying that particular property.

5660. Those gentlemen did not give you instructions to purchase them a joint property particularly?—I cannot recollect that.

5661. Viscount *Stormont.*] Your instructions were to make the best investment you could?—Just so.

5662. *Chairman.*] You are quite sure they did not give you authority to buy the inn at Selkirk?—I have said I am not sure; I think they did not.

5663. Sir *William Rae.*] Can you say that the information was received of the intention of the other party to make purchases prior to the time this was mentioned?—When the purchasers were registered in 1834 upon that property.

5664. Did it appear that that purchase was contemplated before the 25th of January when you came down?—I never saw any document from which that appeared to have been the case.

5665. What was the information Mr. Craig gave you?—A property in Galashiels was advertised.

5666. Of what nature?—House property; long lease property was advertised for public sale on the 22d of January; it was not purchased at the sale, but purchased by two persons at Hawick, on the evening of the 22d of January.

5667. That information you received on the 23d?—Yes, certainly; on the 22d or 23d.

5668. In consequence of that information, you came down on the 25th to make purchases?—I made my arrangement on the 24th of the month, and on the 25th I returned to Selkirk.

5669. Should you have returned to Selkirk at that time but for that object?—No, I do not think it would have been necessary.

5670. *Chairman.*] When you were told by these gentlemen that they wished to purchase property for political purposes, did you tell them of the information you had received?—I think it is probable I did; I might have said to some of them that the opposite party had commenced purchasing; but I cannot say.

5671. Mr. *William Campbell.*] You stated that this property was advertised on the 22d for sale; was it advertised previous to that?—It was advertised previously for sale on that day.

5672. *Chairman.*] Was it bought by two individuals that afternoon, or by one individual?—My information was, that it was bought by persons from Hawick.

5673. You know that two individuals were inrolled the following year?—Yes.

5674. Do you mean to say that it was bought by two persons?—By people from Hawick; I do not know that I knew the names of the people.

5675. Can you recollect whether you were informed at the time whether it was a joint purchase?—I do not think my information was so special.

5676. Previous to that time, had any purchases been made for political purposes?—I am not aware of any.

5677. Had you made any yourself for political purposes?—No.

5678. When you asked those gentlemen to buy votes for political purposes, which was a very unusual practice, did they express any scruples upon the subject?—None.

5679. They at once agreed to purchase this property, without being informed, as far as you can recollect, whether or not purchases had been made by the opposite party?—They authorized me to act for them.

5680. You cannot recollect whether you told them this property had been bought in Galashiels?—I cannot charge my memory with that.

5681. Though your determination to purchase property for political purposes arose from the sale at Galashiels, you cannot state whether those gentlemen were influenced by that?—I cannot.

5682. There were three of the individuals from whom you say you did not get express authority?—Not before the purchase, I think.

5683. What was the nature of the authority you proceeded on?—I purchased the property on the 25th; the title-deeds were sent to Edinburgh, and I think that there was a subsequent communication with the parties, and the deed of disposition was adjusted and sent out to Mr. Rodger again, for the purpose of being executed.

5684. Do you recollect the date of the disposition?—I think it was the 28th or 29th.

5685. Have you it in town?—No, it is not in my hands.

5686. In whose hands is it?—In the hands of the owners themselves.

5687. You acted asagent for them?—Yes, I did for a considerable time afterwards.

5688. From whom can that disposition be procured?—I think it will be in the hands of Mr. John Scott, writer to the signet, who is one of the parties; because the owners held a meeting last summer, and appointed a committee for the purpose of making a new lease with the tenants, Messrs. Mitchell; the lease being about expiring last summer.

5689. To whom did you give it?—I think it was returned to Mr. Scott after the registrations, and after I had rendered my account to him.

5690. Cannot you state positively to whom you gave it?—It was sent to him, in the first instance.

5691. There were other deeds connected with the title as well as that disposition?—Yes.

5692. Did you take those also?—No, I think they remained in the hands of Mr. Rodger; they were to receive them if they thought proper; if the Committee wish it, I can write and get the deeds; I am sure, if I write to any who have them, they will send the deeds.

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5693. Was it one disposition?—One disposition in favour of the purchasers.

5694. You stated, that between the day of purchase and the date of the disposition you had an opportunity of getting authority from the other individuals whom you had not previously seen?—Yes.

5695. Did you get such authority from them?—Yes.

5696. Directly from them?—Directly, I think.

5697. By seeing them?—No, probably by correspondence with Mr. Chisholme; I cannot recollect whether he was in Edinburgh or not.

5698. Are the Committee to understand that the names of some of those proprietors were obtained to this disposition after the purchase of the property was made?—The names of the proprietors are not to the disposition; it is signed only by the disponer.

5699. Are their names not included in the body of it?—Yes, their names were not inserted in the deed before their authority was obtained.

5700. Their names were obtained, in some instances, after the purchase, were they not?—Very probably they might.

5701. Sir *William Rae.*] Was this inn held in joint property before?—It belonged to three or four joint owners before it was sold to Wilson; those joint owners sold it to Wilson, under the burthen of the larger part of the price.

5702. You are understood to say you had authority from all those persons before the purchases were completed in their favour?—Certainly.

5703. What did they pay for it?—The cash price was 1,995*l.*, and by my instruction Mr. Rodger instantly notified to the bond-holders or the heritable creditors that their money was ready; they returned for answer that they would avail themselves of the right to take notice; that they would not take their money till Whitsunday, and of course there was no alternative but to delay payment till Whitsunday; I went out to Selkirk and paid the heritable creditors myself, out of the purchase-money; then there was a claim upon the titles due to Wilson's agent, which Mr. Rodger undertook to get adjusted and to pay, and the balance of the price was paid to Wilson.

5704. What have become of the rents since the purchase?—The rents have been regularly accounted for to the proprietors, but they have laid out a good deal more money since the purchase upon that house; I suppose they have laid out from 300*l.* to 400*l.* upon it; they have embellished the appearance of the house, and improved the internal accommodation.

5705. Do they take charge of those rents themselves?—I continued the charge till, I think, Martinmas 1835; I rendered a state of my account to them; they appointed a committee of their own number to take charge of them, and to let the property.

5706. You have now no concern with it?—I have not since that time; I forget whether it was to Martinmas or Whitsunday that I rendered the state of my accounts to them.

5707. *Chairman.*] When you paid the money on Whitsunday, had you received the share from each proprietor?—I had received it from some of them, not from all of them, but I received it soon afterwards; it is a very common thing for agents in Scotland to be in advance for their clients.

5708. You advanced it?—For a short time.

5709. Were you agent previously to any of those gentlemen who became the purchasers of this property?—No, I was not agent for any of them; I had done some pieces of professional business for some of them, but more as a friend than an agent.

5710. Did you receive the disposition from Mr. Wilson, on the 28th?—I was not at Selkirk on the 28th, I think I was there on the 29th.

5711. Was that given to you?—Yes.

5712. Did you give Mr. Wilson any security for it at that time?—No, for the greatest part of the price was already a burthen upon the property.

5713. The whole was not a burthen upon the property?—The agent's claim was considerable; I think I may have given an engagement to Mr. Wilson, that I would account for the price.

5714. Did not the disposition bear upon it a receipt for the price?—Yes, all dispositions do.

5715. You paid off the burthen?—Yes, as soon as the money would be received.

5716. Have

5716. Have you since paid the rent to the purchasers?—Yes; the rent went so far to the outlays, till the whole were completed.

5717. Were there not some houses adjoining purchased?—Yes, subsequently.

5718. Were they purchased by the same gentlemen?—No.

5719. Were not they united to the inn?—A new access to the inn-yard has been made, and part of them has been occupied by the innkeeper, but at separate rents.

5720. Who are the proprietors of those houses adjoining?—Alexander Thomson, Henry Burn, John Brown, Walter Jollie and Francis Anderson.

5721. Had you at that time entered into a resolution to make as many purchases for political purposes as you could?—No; I had not entered into a resolution to make purchases, for I had no purchasers to take them.

5722. Had you entered into a resolution to create as many votes as you could by the purchase of property in the county?—I had not entered into any such resolution; both parties were purchasing as much as they could, when there were purchasers.

5723. You found, in January 1833, both parties were purchasing as much as they could?—No; I answered the question without reference to that transaction; the chief purchases were subsequently.

5724. When you purchased the County Inn in January 1833, you had found the other party were purchasing for political purposes?—Yes; I had authority from 17 or 18 to make purchases for them then, and if I had got more property I would have gone further.

5725. What is the gentleman in Galashiels who gave you the information of those circumstances?—He is a banker and a writer.

5726. Sir *William Rae.*] The party being inrolled in 1834, it was necessary that he should be in possession the year before, so that he must have obtained his purchase in January 1833, must he not?—No; he would have been a year in possession if he had purchased at Whitsunday 1833; for instance, the long leaseholders must have 12 months' tenancy.

5727. *Chairman.*] Did you make any other purchases of the same nature in that month of January 1833, for a number of joint proprietors?—Yes; I did make another.

5728. Did you purchase the lands of Batts?—Yes.

5729. On the lands of Batts you yourself were inrolled, together with four other gentlemen?—Yes.

5730. You purchased that from Mr. George Rodger, did you not?—Yes.

5731. He was the father of Mr. Peter Rodger?—Yes, an old gentleman, the father of Mr. Peter Rodger, who has been examined here.

5732. With whom did you conduct that transaction?—With Dr. Anderson, as a friend of old Mr. Rodger's.

5733. What was the price you paid?—One thousand nine hundred and ninety-five pounds.

5734. Was that all paid?—Yes, not at the time.

5735. How much was paid at the time?—Either 600*l.* or 650*l.* was paid at the time in cash; not on the 25th but on the 29th or the 30th, the day the disposition was signed.

5736. Had you the authority of those gentlemen at that time to purchase this property for them?—I had.

5737. Had you seen them all previously, or heard from them personally?—I do not think I had seen Mr. Curle, but I saw his partner, Mr. Erskine, who acted with me.

5738. Had you seen the other parties?—Mr. Cunningham and Mr. Donald Smith I had seen.

5739. When was the rest of the price paid?—In the month of March or April following.

5740. Did you give any note or signature for the money?—No; I gave a letter to Dr. Anderson, stating that when he produced searches of incumbrances, and a discharge of the heritable debt which affected the property, the rest of the purchase-money would be paid.

5741. You had the power of paying the whole money at the time?—Yes.

5742. Were you aware what was the burthen upon the property?—I had not seen the searches; but I was informed there was a burthen of about 1,200*l.*

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5743. Is that on the lands of Batts, or on the other land belonging to Mr. Rodger?—Legally it would affect the land of Batts.

5744. Do you know whether it was on one or both lands?—I think it extended over both Mr. Rodger's lands, but I cannot state with certainty.

5745. Had you any valuation of the property before you purchased it?—No, I had not.

5746. On what did you proceed, as to the price you paid?—I proceeded very much on the information of Dr. Anderson, with the assistance of Mr. Erskine, one of the purchasers, whom I had seen, and who, I think, met me at Selkirk, on the 25th of January.

5747. Did you take any steps to ascertain the value of the property?—I took no other steps; I saw the premises.

5748. Did you, from your own judgment, consider them worth the price you paid for them?—I will not give an opinion upon the value of the lands.

5749. The question is on what you proceeded in the purchase; did you buy it on your own opinion?—I bought it on my own opinion, and the opinion of Dr. Anderson and Mr. Erskine; I consulted nobody else.

5750. Do you usually purchase lands without taking pains to ascertain their exact value?—Is the question, when I purchase for myself or others?

5751. When you purchase for others?—I took the best pains I could, through Dr. Anderson.

5752. Dr. Anderson was acting for the seller?—Yes.

5753. Do you generally take the valuation the seller puts upon the lands?—No, I should say that would be going rather too far; I beat down Dr. Anderson in the price; there was more asked at first, and I considered it a fair purchase.

5754. You got no valuation of the lands from others competent to give you an opinion upon the subject?—I got no valuation of the lands.

5755. Mr. *W. Campbell.*] In fact you were not very particular whether it was a very good or a bad bargain?—I was making the best bargain I could for myself and my clients.

5756. Sir *William Rae.*] What was the extent of the property?—I think about 50 acres of ground, well enclosed, and in good cultivation.

5757. Where does Mr. Erskine reside?—Within three or four miles; at Melrose.

5758. Acting for others, would you purchase a thing at a price above its value?—Certainly not.

5759. *Chairman.*] Were you less particular in making that purchase because you were acting with another who was a political agent for the same party?—I am not aware that Mr. Rodger, senior, was ever a political agent; I never saw him on any professional business; he was a very old man, and a very infirm man at the time.

5760. Are you aware that he had a share in the profits of the office?—I had not an opportunity of knowing; I never communicated with the firm as consisting of him and his son.

5761. Viscount *Stormont.*] Was he not bed-ridden at the time?—He was confined to the house.

5762. *Chairman.*] You gave this sum of 1,995*l.* without ascertaining that the lands were worth that amount?—I made the best bargain I could for my employers.

5763. Viscount *Stormont.*] You were one of the purchasers yourself?—I was.

5764. Should you have bought that property yourself had you not considered it a fair investment of your money?—I should not.

5765. *Chairman.*] Do you recollect the date of that purchase?—The 25th of January.

5766. The same day as the purchase of the inn was made?—Yes, verbally concluded at that time.

6767. This purchase you had no opportunity of making till you went down to Selkirk that day?—I intended to purchase any property I could get on that day.

5768. You did not go down with a view of purchasing that particular property?—I believe it was mentioned by Mr. Pringle that it might perhaps be got; I was aware it might probably be got.

5769. Did the purchasers give back a lease to Mr. Rodger of his premises?—Not on the day of the purchase.

5770. How soon after the day of the purchase?—I went down to the house of the old gentleman, at Bridgeland, on the 29th or 30th, and arranged, after a long discussion, the terms of the lease there.

5771. Was that lease thought of at the time of the purchase?—No, it was not; but the old gentleman was very anxious to have it.

5772. Did he state so at the time of the purchase?—He did not at the time of the purchase. I did not see him; but Dr. Anderson gave in evidence at the last Registration Court that he was very anxious to have it.

5773. Was that mentioned at the time of the purchase?—No, I do not think it was.

5774. When you and Dr. Anderson concluded the purchase of the property, was any allusion made to the grant of a lease?—No; but Dr. Anderson stated that he was perfectly sure we could get a rent of 65*l.*, and I made Mr. Rodger pay 65*l.* a year and the public burthens, with a condition as to straw, and so on.

5775. Dr. Anderson told you that he was sure you could get a rent of 65*l.*?—Yes, he said it would return 60*l.* or 65*l.* a year.

5776. Dr. Anderson was acting on behalf of the old gentleman at that time?—Yes.

5777. Did the idea of getting that rent make any difference as to the price you gave?—It was an ingredient in ascertaining the value of the property.

5778. Did you buy it, intending to give so many years' purchase for the property?—It would be an ingredient in my calculation, but this was a verbal communication four years ago; I cannot enter into all the details.

5779. In making a purchase you naturally look to the return you are to expect?—Yes, that is one of the ingredients, no doubt.

5780. You stated that 1,345*l.* was retained from the original purchase-money of Batts?—I cannot specify whether it was 600*l.* or 650*l.* I paid at first.

5781. The burthen on the property was 1,200*l.*?—About 1,200*l.*, but I cannot specify whether that was the precise burthen on the property; I retained a part of the price; I cannot recollect the exact amount of it.

5782. Was the sum you retained intended to be just an equivalent for the burthen on the property?—No, I do not think it was, but of course I would not pay too much; I think that I was told that 650*l.* was the sum that Mr. Rodger wanted at that moment, or was inclined to take at that moment.

5783. In March or April, when you paid the rest of the money, had you received the cash from other persons?—I had received the cash, or received it immediately afterwards; I could not know the exact sum till I paid it perhaps within a few days.

5784. Did you state that you gave Mr. Rodger your bond or bill for that money?—No, I think I gave Dr. Anderson a letter, stating that the balance of the price, deducting the amount I had paid to him, would be paid to Mr. Rodger the moment the discharges of the heritable securities were exhibited, together with the searches of incumbrances, and Mr. Rodger brought them into Edinburgh, and I settled with him.

5785. Is it not a common thing for the purchaser to discharge those securities himself, when a person buys a property on which there is a debt, or does he wait for the person who is selling the property to clear off the debts?—The most common course is for the seller to pay his own debts, and to produce the discharges and renunciations, and then to receive the money.

5786. Do you mean to say it is not a common transaction for a person who is purchaser of a property to be in reality the man who pays off the debt?—It does occur, but it is not the common course, unless it is intended to keep up the debts by taking conveyances; then that would be a very judicious course.

5787. If you were purchasing property for a political purpose, if you wished to get possession of it, would you not rather take it with the burthen upon it, than wait and leave it in the hands of the person who is selling it till he paid off that burthen?—If I wished to purchase a property within a particular date, I would take it; but I would not pay the price till I had seen it clear of incumbrances.

5788. Does not the person give you a receipt for the money when he makes the disposition?—He acknowledges the price in the disposition, or it may be otherwise stated in the disposition.

5789. Did Mr. Rodger acknowledge the receipt of the price when he gave you the disposition?—Yes, in the deed.

5790. What security had Mr. Rodger for the purchase-money?—He had my letter of obligation to Dr. Anderson, which I have stated.

5791. The letter of obligation was to pay the price to Mr. Rodger on his making good that condition?—Yes.

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5792. But whether you paid the price or not to Mr. Rodger, still he had conveyed the property out and out?—Yes; but he conveyed it subject to a burthen, which I could not get discharged without payment of the money; there was a heritable security over the property, and Mr. Rodger could not get it discharged, nor could I without paying the amount.

5793. What security had Mr. Rodger for the purchase-money of which he gave you a receipt in full, of which he had not received the payment, only of a part?—Mr. Rodger had no other security from me than the letter of obligation, which I have stated; but the debt was due to a third party, affecting the property which I had purchased, and that third party could have made it effectual against the property.

5794. Viscount *Stormont.*] Was it stated in the disposition?—No, that is not usual.

5795. Was the proprietor infeft?—Mr. Rodger was infeft, and the heritable creditor was infeft.

5796. *Chairman.*] Still the burthen upon that property was 1,200*l.*, the money you retained was 1,345*l.*; what security had Mr. Rodger for that 1,345*l.*?—No other security but my personal security, given to Dr. Anderson.

5797. That personal security was purely conditional?—Certainly; if the heritable debt had been more than the balance, it would have remained a burthen upon the property until it was discharged.

5798. Who has received the rents of this property from Mr. Rodger?—The purchasers.

5799. Who has received them for them?—Mr. Curle, or Curle & Erskine, agents to the purchasers.

5800. Have you received your share of the rent?—Yes, I have received it down to Lammas last, and I suppose the next half year will be waiting me when I go home; it is payable at Candlemas and Lammas.

5801. One of the purchasers was Mr. Cunningham; had you his authority for making that purchase?—Yes, personally.

5802. Was he inrolled upon it?—Yes.

5803. Sir *William Rae.*] What relation was he to the sitting Member?—Brother-in-law.

5804. *Chairman.*] Were there not two Mr. Cunninghams to whom a disposition was taken?—Mr. Cunningham, junior, also.

5805. Had you his authority for advancing the price?—I had his father's authority.

5806. Why was not he inrolled upon it?—In the first place, he was not of age, and in the next place, he was going abroad.

5807. What became of his share of the property?—He, with the concurrence of his father, as his tutor at law, sold the property to Mr. Robert Keith Pringle, a brother to Mr. Pringle, of Whitebank.

5808. Had you any thing to do with that transaction?—Yes.

5809. What was the price he received for his share?—The exact price.

5810. Was it paid to you?—It was paid by Mr. Pringle, of Whitebank, acting for his brother.

5811. You stated, that in 1832 there were no joint proprietors inrolled in the county of Selkirk?—There were only four, so far as I have been able to examine the register.

5812. Sir *William Rae.*] Those parties were inrolled afterwards, upon the lands of Batts?—They were inrolled in 1833 without any serious objection, but they were objected to in 1836.

5813. Was any objection made to them in 1833 at all?—Yes.

5814. Of what nature?—That they were not, at least that they had not been for the period of six months, co-proprietors or joint owners of the subjects; secondly, that their interest in the subject was not of sufficient value; thirdly, that the subjects did not lie in the county of Selkirk.

5815. Those objections were overruled?—There appears to have been very little discussion; they were overruled on the production of the title.

5816. What happened at the court in 1836?—The objections were, that the claimants are not, or that they have ceased to be co-proprietors or joint owners; and secondly, that the subjects are not of sufficient value to afford a qualification.

5817. How were those objections disposed of?—They were expunged by the sheriff.

5818. On what ground?—The lease was produced, and the objectors brought forward three or four witnesses to prove that the lands were too high let.

5819. Upon that objection the sheriff rejected the claim?—And referring to the decision which took place in 1834, of which he was convinced himself he had taken a wrong notion when it came to the Appeal Court.

5820. *Chairman.*] What was that decision?—I do not know; those were his words: "In respect of the judgments of the Appeal Court last year, holding that the rent is not to be considered as *probatio probata* of the value," &c., sustained the objection.

5821. Sir *William Rae.*] That was appealed from to the Appeal Court?—Yes.

5822. What passed then?—Dr. Anderson was the first witness examined in the Appeal Court; Mr. Rodger was also examined, and proved the payment of the rent, and his occupancy under the lease then subsisting, for 12 years from 1832, four years of it having run; Sheriff Boswell delivered his opinion: "Rent, generally speaking, is the criterion of value, but if low, it may be redargued. Where there is an actual lease for years and a solvent tenant, it would require strong evidence to set aside that lease. Here we have the subjects and the rent. Is there any proof of the rent being *simulate*? The evidence of Dr. Anderson and Mr. Rodger removes all pretence on this ground." Sheriff Rutherford: "I am satisfied that there were two separate transactions; first the sale, then the tenancy; the tenancy fixes the value under the statute, no collusion being alleged; if it were alleged, it is removed by the evidence of Anderson and Rodger." Sheriff Wood: "I concur in the observations and the result; if I had been in the original court I would have been of the same opinion; where rent not actually paid, I do not hold the lease as *probatio probata*; for instance, in the cases of dispositions and back-tacks; I have been anxious to sift this case, and I cannot find any thing *simulate*."

5823. Who was the sheriff who gave the first judgment?—Sheriff Miller.

5824. Did he take any part in the judgment in the Appeal Court?—No; there is a special provision that where there are four sheriffs in the Appeal Court, he whose decision is appealed against can take no part; he was upon the bench at the time, and he said he had mistaken the decision of the previous year.

5825. You heard him state that?—Yes.

5826. It is stated in that judgment of the sheriffs, that if there is a suspicion of any thing collusive, the evidence of Dr. Anderson and Mr. Rodger removes that?—Yes.

5827. Suppose there had been something collusive in the transaction, would not Dr. Anderson and Mr. Rodger have been the very parties who had been the parties to the collusion?—Dr. Anderson might have been accused of that, but Mr. Rodger could not, because he had succeeded to the obligations of this lease under his father's settlement, and he was not a party to the original lease.

5828. Why did not Mr. Rodger conduct the purchase for his father?—Because he was the political agent, and would not interfere in the purchase.

5829. Then if he was political agent, was he a fair witness in a case where his evidence was so material to his own party?—He had ceased to be political agent in the year 1835.

5830. Mr. *W. Campbell.*] Was there any accusation of collusion?—We urged them to state collusion, and try and prove it, if they could.

5831. In your opinion, as a lawyer, would it not have been held that there was *probatio* of collusion, if it had been known that Dr. Anderson, acting for the seller, had stated to you, who were acting for the purchasers, that he would insure a rent of 65*l.* per annum out of the property you were to purchase?—Dr. Anderson never stated that he would insure me a rent of 65*l.* per annum out of the property, but that he thought we should get that.

5832. If those circumstances had been pointed out before the Sheriff's Court, would not it have amounted to *probatio* of collusion, when it appeared that the person acting for the seller made such a statement to the person acting for the buyers?—Whoever makes such a charge must prove it.

5833. Sir *W. Rae.*] Is it not very common for a person selling to make a statement that a certain rent is probable, to get a higher price?—Yes, there are a great many instances where property is sold where that is done.

5834. Mr. *W. Campbell.*] Was it not the case that there was the evidence of three most respectable farmers, who proved that the property was not worth more than 38*l.* or 40*l.* a year?—Of the land, as held by itself; but this was not held by itself.

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5835. *Chairman.*] Then Mr. Rodger, after he had parted with this farm, and it was in possession of the purchaser, voluntarily paid 67*l.* a year, including burthens, for a farm which no one else would have given more than 45*l.* for?—No, I cannot admit that, because of its locality; what I mean is, as a separate farm, for a man to reside on and cultivate; one of the witnesses talked of a led farm.

5836. No other person would have given that amount for it?—It might have suited others, for there were adjoining lands.

5837. Was there not the evidence of three farmers, well acquainted with that property, that the marketable rent for that farm was not above 45*l.* a year?—It was not as a marketable rent, it was as a separate farm; but if Dr. Anderson and Mr. Rodger were partisans on the one side, most assuredly the farmers brought for ward were very keen partisans on the other.

5838. You had the means of bringing forward farmers also?—Yes.

5839. Did you bring forward any?—No, we relied on our lease; unless they brought evidence of its being simulate, it was not necessary to bring forward that kind of evidence.

5840. If it was proved that Mr. Rodger gave a much higher rent than farmers in the neighbourhood would give, and the charge of collusion was brought against the parties, would not Dr. Anderson and Mr. Rodger have been parties to that collusion?—Most certainly not; they would be witnesses; they could not be charged as parties to the collusion; all who can be charged with the collusion were the purchasers themselves, and old Mr. Rodger; they might have been charged with having entered into a collusive transaction.

5841. Did not Dr. Anderson conduct the whole transaction for Mr. Rodger?—The sale, not the lease.

5842. Would not the charge of collusion imply, that the lease was an understanding between the parties at the time of the sale?—Not for an undue rent; whoever charged collusion must make it out.

5843. Viscount *Stormont.*] Was that charged?—No.

5844. *Chairman.*] If the charge was, that at the time of sale the lease was intended, would not Dr. Anderson have been implicated in that charge?—They could not make it against him; he was no party to any deed or deeds under which any collusion had taken place.

5845. Did not he conduct the transaction for Mr. Rodger?—He sold the estate for him.

5846. If there had been an understanding at that time that a lease was to be given back, would not he have been the person with whom that understanding would have been made?—I do not think any charge of collusion can be brought against him.

5847. Would it not be brought against him if that was the fact?—No; the charge of collusion cannot lie against him; it would lie against old Mr. Rodger.

5848. Mr. *W. Campbell.*] Is not the agent in a fraudulent transaction the person committing the fraud, though he commits it for the benefit of another person?—Fraud must be charged in a criminal court; it must be charged against the principal, not against the agent.

5849. *Lord Advocate.*] Do you consider that it would be a criminal fraud if a party agreed to give a higher rent, in order to get a higher price for the purchase of his land than it is worth?—No; I think that would not be considered a fraud chargeable in the criminal court.

5850. Would it be criminal at all?—It would have the effect of setting aside the transaction; I think the sheriffs would set aside the claim, if it was proved.

5851. Would there be any thing criminal in the agreement between the parties?—Not legally criminal.

5852. If it was agreed, at the time, that there should be a higher rent paid than it was worth, for the purpose of charging a higher price, would not Dr. Anderson be the person bringing about that agreement?—No; I think Mr. Rodger would be the party; no charge would lie against Dr. Anderson.

5853. He would be the person privy to it, and carrying it on?—I do not think any charge would lie against him.

5854. Would he not have been the person who carried on that agreement, whether there could be collusion or fraud charged against him, or not?—No; I should think Mr. Rodger would be the person responsible for that, but I do not pretend to set up my opinion before such high authorities.

5855. Would not Mr. Rodger, the son, have been liable for the obligation of the father,

father, if he agreed to pay a higher rent than the subject is worth?—He is subject to the rent now, and is responsible for it; if he took up the representation, he would, of course, be responsible.

5856. He did represent his father?—He and his family did.

5857. *Chairman.*] If the charge of collusion were brought against his father, do you think Mr. Peter Rodger, his son, was the best witness to cite upon that occasion, that his evidence was sufficient to set it aside?—It depends upon the want of bringing a case of collusion; Mr. Rodger must then meet it by his evidence.

5858. Suppose there were a charge of collusion against his father, would he be a proper witness?—His father was dead, and he represented his father.

5859. Viscount *Stormont.*] Did not the sheriffs state that there was no collusion alleged?—Yes; Sheriff Boswell said, "Is there any proof of the rent being simulate? Dr. Anderson and Mr. Rodger have removed any pretence on this ground." Sheriff Rutherford says, "No collusion is alleged, and if there were, it is removed by the evidence of Anderson and Rodger;" if there had been a charge of fraud and collusion, the sheriffs would have gone into evidence to ascertain the real value, and they would not have given faith to the lease; but here there is no charge of fraud and collusion, there is a lease followed by the actual payment of rent; that is quite sufficient.

5860. If there had been a charge of collusion, would Dr. Anderson and Mr. Rodger have been the only witnesses you would have called in defence?—I cannot cannot answer that question; we might have got other witnesses perhaps.

5861. Had you any other witnesses in court if that charge had been made?—No.

5862. You had no farmers to prove the value?—No; we could bring in the Appeal Court only those examined in the original court, and collusion was not alleged.

5863. *Chairman.*] That goes to prove that Dr. Anderson and Mr. Peter Rodger were the most unfit witnesses which could be adduced, if there was a simulate rent given?—Dr. Anderson was brought forward to prove that there were two transactions, that he sold the estate, but that he had nothing to do with the letting of the estate; and Mr. Rodger was brought forward to prove that he was in possession of the land, and paid the rent under that lease.

5864. Was it clearly admitted by Mr. Rodger, that taken alone, that farm was not worth more than the valuation put upon it by the farmers?—No; he proved that his father was dead; that he managed the farm for his representatives; that he was not aware of any bargain with his father, at the time of the sale, for a lease; that the rent was not extravagant; that the land was convenient for the occupier of Bridgelands; and that his father was willing to give the rent; that is the whole of his evidence which is material.

5865. Sir *William Rae.*] You state that that is a true account of the evidence?—Yes, it was taken down very shortly, but it is the substance.

5866. Mr. *William Campbell.*] Are you aware that Mr. Rodger, at present, pays this rent of 65*l.* a year?—I am aware that he has paid it, and that I received it up to Lammas last.

5867. Has there been a remonstrance upon his part?—Never.

5868. Are you aware that he now holds the farm of Bridgelands and the lands of Batts for himself and his brothers and sister?—Yes; I will read my note of the evidence:—"Dr. Anderson says, I was intimate with the late George Rodger, and I acted as his friend in 1833; I agreed for a sale with Mr. Horne, and told him he might get a rent of about 65*l.*; I sold to Mr. Horne without any obligation on Mr. Rodger or Mr. Horne to grant or take a lease; rent not high, considering the situation, and that the land was new limed and drained; I know that Mr. Horne negociated the lease with Mr. Rodger after the bargain for the purchase; Mr. Rodger says my father is dead, and I manage the farm for his representatives; I am not aware of any bargain with my father at the time of sale for the lease; rent not extravagant, as the land is convenient for the occupier of Bridgelands; my father was willing to give the rent; I occupy the farm now on behalf of myself and my father's family." Those are the words of his evidence in the Registration Court.

5869. You are not aware that there has any transaction taken place between him and the other representatives of this family?—Not in the slightest; I do not know what interest he or any members of the family could have in it.

5870. *Chairman.*] That property was bought for political purposes?—It was an investment of capital, and for the purpose of conferring a right to vote.

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5871. Was Dr. Anderson aware at the time that it was bought for a political purpose?—I dare say that Dr. Anderson was quite aware that the parties for whom I was acting as agent were desirous to have the franchise.

5872. Was this an unusual manner of acquiring property by joint ownership?—Not unusual, but clearly brought into more frequent use by the Reform Act.

5873. Was it rare before?—I have given an instance of an inn held by three joint owners before the Reform Act passed.

5874. Mr. *William Campbell.*] Was that built as a tontine?—No.

5875. *Chairman.*] How long ago was that?—Ten or fifteen years ago.

5876. Do you recollect the circumstance of the purchase of that inn?—No, I know this only from the title-deeds.

5877. Can you mention any instance within your own knowledge of a purchase of that description previous to January 1833?—I have known plenty of partners in the purchases of estates.

5878. Do you know any instances of persons in no way connected with one another, by trade or otherwise, who became joint purchasers of property?—Yes.

5879. Eleven or twelve in number?—Yes; I think there were 11 or 12 purchasers in the famous purchase Sir James Gibson Craig made near Belford.

5880. Was that a purchase for a political purpose?—No, a speculation, I presume.

5881. Was it an estate?—Yes.

5882. Can you state that you know there were a number of purchasers on that property?—Yes, it was notorious.

5883. *Lord Advocate.*] Were there more than four?—Yes, I think there were.

5884. *Chairman.*] Can you state any other instance besides that?—Yes, the purchase of the Strathcommon estates.

5885. Who were the purchasers?—Mr. James Stewart and Mr. Cunningham, now Lord Cunningham and Mr. Brougham, and one or two other partners; Mr. Joseph Gordon, I think.

5886. Was Sir James Gibson Craig one of them?—I think not.

5887. These were large estates?—Yes, small estates converted into a large estate by being united together.

5888. Do you recollect any others?—I dare say I might; but I do not at this moment.

5889. Can you mention any other purchases of that description?—I cannot remember others at the present moment.

5890. *Lord Advocate.*] Were not those estates properties to the amount of from 20,000*l.* to 50,000*l.*?—Yes, when they were united; not originally.

5891. Did you ever hear of 10 persons purchasing a property of the value of 2,000*l.*?—No, I am not aware of any case of that nature prior to the passing of the Reform Act.

5892. Sir *William Rae.*] Do you know Torsonce Inn, in the county of Edinburgh?—Yes.

5893. How is that held?—It is held in shares.

5894. *Chairman.*] Is the disposition taken to the proprietor?—I never saw the disposition; it is either taken to the proprietors or to trustees for the behoof of the proprietors.

5895. Can you say whether it is taken to trustees?—I think I have heard it is.

5896. Is not that rather a proof that taking to joint proprietors is unusual, if it proves any thing?—No, I think not; it may be taken to trustees, in order to save the expense of making up titles when any one of the partners dies.

5897. *Lord Advocate.*] Was not that the usual practice where properties are taken by several individuals?—I do not think I ever had such a case in my own practice.

5898. Did you ever hear of any case occurring in any other person's practice where the title was not made to trustees, but that case of the inn at Selkirk?—I do not at present recollect any case.

5899. *Chairman.*] You have stated that the purchase you made of the inn at Selkirk was a kind of purchase very uncommon at that time?—It certainly was not common.

5900. *Lord Advocate.*] Did you ever hear an instance like that, in point of value and the number of purchasers?—I am not aware of any instances I can point out at the present moment.

5901. *Chairman.*] Did you purchase any other joint properties in Selkirkshire that year?—No.

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5902. You stated there were some life-renters on the register of 1832?—Yes, eleven.

5903. What was the nature of their holding; were they all life-renters by office?—No, eight of them, I think, were life-renters by office.

5904. What were the other three?—They were husbands of life-rentrixes, who were registered in 1832, and expunged in 1833, as not entitled to the franchise.

5905. There was no case of a life-renter by grant being inrolled at that time?—Not of a grant in favour of the individual.

5906. Was there any of that kind inrolled in 1833?—Yes.

5907. Was that the case of James Simpson?—Yes.

5908. Was that a vote which was suggested by you for a political purpose?—No, certainly not; I do not recollect having heard any thing about it until afterwards; there may have been some conversation upon the subject, but most assuredly, not suggested by me.

5909. At that time, had you contemplated making any life-rents in that manner?—This was granted by brother to brother; I understand all the brothers were living together.

5910. Had you at that time contemplated making any life-rent votes for a political purpose?—No.

5911. The grantor conveyed the life-rent, and reserved the fee?—He conveyed the life-rent; it was not necessary to reserve the fee.

5912. Was that an unusual proceeding?—No, certainly not an unusual proceeding, because life-rent rights are clearly recognized by our law, and pointed out by the forms contained in our style-books.

5913. Do you mean to say that the form of such a life-rent as that of Simpson's is contained in your style-books?—Yes.

5914. What styles?—The Juridical Styles, or Bell's Styles.

5915. Are you certain there is the form of such a life-rent in the Juridical Styles?—I have no doubt of it; I have not looked into them for some years.

5916. Can you state where it will be found?—In the volume on heritable rights, I presume.

5917. Will you find it, and show it to the Committee?—I have no access to any books, except Bell's Principles, where the thing is laid down.

5918. Sir *William Rae.*] You executed some deeds of that description subsequently, did you not?—I prepared several subsequently.

5919. Did you take them from any style-book?—I have no doubt that the styles would be consulted in drawing out the draft; that is generally done by the young men in our chambers.

5920. *Chairman.*] Will you refer to the Juridical Styles, and point them out to the Committee, when you next come before them?—I will look to the forms for that purpose, before the Committee meet again.

5921. You do not know any thing of the circumstances attending this grant from Mr. Simpson to his brother?—No, I do not.

5922. That was conducted by Mr. Rodger?—Yes, if Mr. Rodger mentioned it to me on the 29th or 30th, I have no recollection of it.

5923. *Lord Advocate.*] Is not the usual form, where a life-rent estate is created, to reserve that to the owner of the estate, and, subject to that life-rent, to give to another the fee?—In *mortis causâ* settlements that is done sometimes.

5924. Is it not very common in purchases?—That depends upon the desire of the purchaser.

5925. Is it not common where a sale is made, for the seller to reserve a life-rent?—There may such cases have occurred.

5926. Is it a common transaction for a person to retain the fee, and grant the life-rent to another?—It is common in our practice; it was so before the Reform Bill.

5927. That was done for the purpose of creating a vote?—It was done for creating a vote.

5928. Can you state any instances where it was done where it was not for creating a vote?—I cannot at this moment remember any instances.

5929. Was it a common transaction for a party to sell a life-rent, retaining the fee?—No, it was not a common transaction.

5930. Do you think there were any instances of that, unless for the purpose of creating votes, before the Reform Act?—I do not recollect any instances just now.

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now, but I think instances must have been contemplated, because the eighth section of the statute confers the right upon the life-renter, and not upon the fiar.

5931. Was it not common for a person to sell his property and grant a life-rent?—No, I think that was not a common transaction.

5932. Have you not heard of such a transaction?—I do not recollect having heard of such a transaction.

5933. Was it not very common for a purchaser to take a purchase to himself in life-rent, and to his son *nominatim* in fee?—No, I do not think that was very common.

5934. Have you not seen such cases in the courts?—In *mortis causâ* settlements, but not in purchases, to my knowledge.

5935. There was one case where a question arose whether the father could alter the term afterwards?—There might be such a case.

5936. That might be the case contemplated by the Act?—It might be.

5937. Was it not more likely the Act might contemplate some case known, than one you never heard of?—That I cannot say; I take the Act as I find it.

5938. Do you think that the Act referred to a case you had never known of before?—I really cannot say what the Act contemplated; I must look at the enfranchising section.

5939. Are there not a great many instances of life-rents constituted in various ways, though not by purchases?—Yes, there was a life-interest in favour of clergymen and schoolmasters; there was life-rent by the courtesy of Scotland, in the husband of an heiress.

5940. *Mortis causâ* settlements created life-rents?—Yes, where the life-renter was a spendthrift, that has been done; I think, chiefly in *mortis causâ* settlements.

5941. There were various instances of life-rents known in the law of Scotland and in the practice of the country?—Life-rents have been all along recognized by the law of Scotland.

5942. *Chairman.*] You say that you took the Act as you found it, that you considered that any votes which were sanctioned under the clauses of that law you were justified in getting put upon the roll?—Most assuredly, if the statute is complied with, then I hold that it is perfectly legal for any one to get upon the roll.

5943. Are you aware of any persons having got upon the roll who have shown titles to show they were proprietors upon the subjects, but who in reality exercised no rights upon the property, nor acquired any real interest?—Yes, I think I am.

5944. Do you think those are fair votes under the Reform Bill?—In Scotland it has been decided that you are not bound to deduct heritable debts; I think there are many persons on the roll who have not a ten pound interest in the property, but who vote in consequence of those debts not being deducted.

5945. Are you not aware of persons having acquired an interest in property though they did not acquire any of the rights of property, nor possession, nor any real interest in it?—No, I think such a vote would not be registered.

5946. Have you not known any such instances occur?—There are instances; I think the strongest was a case of William Robertson Baker, in London, and Richard Robertson Baker, in London, in 1835; we took a special objection there; the disposition was by their mother in consideration of the sum of 498*l.*, and the whole price was declared in the disposition a real burthen on the property; we objected that as this burthen appeared *ex facie* of the title, the interest ought to be deducted before ascertaining the value, but the judges were of opinion that the interest was not a condition of the right, but a burthen on the right; and therefore those two claimants are now upon the roll, although the grantor of the disposition draws nearly the whole rents as the interest of the price; there was another case occurred in the same year; if I mistake not, the case of the tenancy of Robert Oliver, registered in Galashiels, under a long lease, where the assignation contained a declaration of a real burthen on the property, but the judges in the same way held that the real burthen was not to be deducted.

5947. Do you know instances of persons showing a title on which they were inrolled, where in reality they did not get possession of the property nor exercise any of the rights of property, nor get a real interest in the subject?—I think, if that were proved, the claim would be rejected.

5948. Do you know of any cases of exchanged life-rents where parties have acquired life-rents and given back leases?—Yes.

5949. Where

5949. Where neither party has taken possession of the subject conveyed to him? —Yes.

5950. And where he exercises none of the rights of property?—I do not say where he exercises none of the rights of property, for the very granting of the lease may be considered the exercise of a right of property.

5951. Where there has been no apparent change of circumstances, as far as regards occupation, do you know such cases?—Yes, I know a variety of such cases; a variety of such cases were registered in 1835, being exchanges between John Robertson and a variety of others resident in Selkirk, with Charles Williamson and a variety of others resident in Hawick.

5952. Do you think those votes were such as were contemplated by the Reform Bill?—I am not entitled to say otherwise; I objected to those votes, and thought they were not; but the Sheriffs and the Appeal Court have sustained those votes.

5953. Those votes have been registered in the Sheriff's Court and the Appeal Court, which in your opinion were not contemplated by the Reform Bill?—No, I do not say they were not contemplated by the Reform Bill, but there have been votes of this description registered both in the Sheriff's and the Appeal Court, which, in my opinion, ought not to have been registered.

5954. Sir *William Rae.*] Those votes were in the liberal interest?—Yes.

5955. *Lord Advocate.*] Why ought they not to have been registered?—I hold that a back-tack proves confidence and a colourable transaction; I do not know that it is contrary to the Act.

5956. *Chairman.*] You do not think that the back-tack in the case of Batts proved that?—The lease was not at the same time.

5957. It was at a distance of only three days?—It was very shortly afterwards, but it was a separate transaction; I refer to life-rent cases, where the disponee receives a life-rent granted under a disposition, and at the same time, or nearly at the same time, grants a lease back to the disponer to last during the period of the disponee's right under the disposition.

5958. Sir *William Rae.*] Do you know several instances of that nature?—Yes, several; I can give their names.

5959. Viscount *Stormont.*] On which side were those votes made?—They were made by Mr. Pringle's (of Clifton) agents.

5960. In what year?—In 1835.

5961. Were there any of the same description put on by you?—No, none.

5962. *Chairman.*] Have you known of none put on by your party in any other county in which you have been agent?—I have never registered any myself under a back-tack.

5963. Have you known any such registered in any county in which you have been agent?—No, I have not.

5964. You do not know of any having been created in the county of Roxburgh?—No, I do not.

5965. Do you know of any having been created in the county of Edinburgh?—I had no professional interference with the county of Edinburgh.

5966. Do you reside in the county of Edinburgh?—I reside in the city of Edinburgh, during the winter.

5967. Have you taken any part in creating votes in the county of Edinburgh?—No; except individual votes for clients of mine.

5968. Have you taken any part in acquiring property for the creation of votes in the county of Edinburgh?—No, I have not, except for my own clients.

5969. In the county of Edinburgh, have you known of any exchanges of life-rents created by your party?—I do know of one or two by clients of my own, but I do not think there are back leases.

5970. Sir *Hugh Campbell.*] Do you know that of your own knowledge?—I transacted one or two for clients of my own, but there are no back-leases there to my knowledge.

5971. *Chairman.*] Can you state that there were no back leases?—Yes, I think I can, but I am speaking from recollection, and I will not be positive.

5972. In the year 1833, were there any joint tenancies created in the county of Selkirk for political purposes?—There were no new joint tenants registered in 1833, I think.

5973. Was William Grieve registered in 1833?—Yes, he was, but he is not a joint tenant.

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5974. He received the assignation of part of a farm?—He claimed in 1832, and was rejected as sub-tenant of the lands of Henwoodie, from his father.

5975. Was he admitted in 1833?—He was.

5976. Did he show on that occasion any assignation from his father of part of the lands?—He produced a sub-tack from his father in writing; he had taken possession in the year 1824.

5977. A sub-tack given by the father to the son?—Yes.

5978. Was the date of that 1824?—No.

5979. What was the date of the tack?—I do not recollect its date, but it must have been subsequent to the registration of 1832.

5980. Was it proved that at that time the father had not the power of assigning this part of his farm?—I think that objection was taken in 1832; I believe that no sub-lease was produced in 1832, but the Duke of Buccleuch granteda dispensation to his father upon the back of the tack in 1834, and the duke's chamberlain appeared in court, and was ready to prove, if called upon, that he knew of the sub-set to the sub-tenant for several years before. The father was not able to appear in court, but he wrote a letter which was received in evidence, in which he says:—"I delivered the stock of that portion of the farm, at Buccleuch, to my son, William Grieve, at Whitsunday 1824, on condition that he should pay the proportion of the rent agreed upon, videlicet, 100*l.*" Any formal agreement in writing was unnecessary, nor was I at liberty to enter into any such, as by the common style of my lease, and every lease, I was precluded from entering into a sub-set; but that he has ever since occupied Henwoodie as sub-tenant, and paid the agreed proportion of the rent, can admit of no doubt; to that I am willing to depone before any competent judge."

5981. At the time he sub-set that part of the farm, by the terms of his lease from the Duke of Buccleuch, he had not the power of doing so?—He was precluded by his lease; all the duke's lessees are precluded, but he claimed as occupant.

5982. That dispensation of the Duke was produced in 1833?—Yes, the principal lease, with the dispensation on the back of it; it proceeded on the narrative of the fact having been known; I think it was dated in London, in the month of July 1833, but the application appears to have been in the month of March or April.

5983. Was it not necessary that dispensation should precede any sub-setting on the part of the old tenant to his son?—No.

5984. Could he sub-set a part of his farm without having that dispensation from the Duke?—He could, and the only person who could challenge that, was the Duke; but the Duke's chamberlain knew it, and had received the sub-rents, which was acquiescence by our law.

5985. Sir *William Rae.*] He was sub-tenant at the time he made the claim in 1832?—Yes; the only objection I understood was, that it was included in his father's lease, and that the father had been previously registered on the whole farm; whereas the father is registered on the farm of Buccleuch, which lies in the parish of Ettrick; the claim must set forth what parish the claim is made in; Henwoodie, upon which William Grieve was registered the following year, lies in the parish of Roberton; therefore it could not have been contained in James Grieve's claim in 1832.

5986. Are the Committee to understand that the dispensation granted by the Duke of Buccleuch in the spring of 1833, sanctioned the transaction which had previously taken place, which was contrary to the terms of the preceding lease?—Yes, which had previously taken place, known to his Grace's chamberlain.

5987. But which was contrary to the terms of the lease then existing?—Yes, contrary to the terms of the lease then existing, but which could be challenged only by the Duke of Buccleuch; the right of challenge was not open to any body but him.

5988. Viscount *Stormont.*] You state that the dispensation of the Duke was dated in July 1833?—I think it was.

5989. It is necessary by the Reform Bill that a tenant should have been in possession and occupation for more than 12 months?—Yes.

5990. Was it not held by the court that William Grieve had been in occupation and possession for above 12 months prior to his claiming?—It was held by the Court and admitted by the parties; all the witnesses who were brought forward to prove the fact were not examined.

5991-2. *Chairman.*] Were Robert Brydon and James Paterson inrolled in the same year?—They were registered as joint tenants of the lands of Redford Green in 1833; they claimed in 1832, but were rejected.

5993. They

5993. They were assumed into the lease with their uncle, were they not?—Not assumed; they were in the original lease.

5994. Do you know that Mr. Brydon has several farms?—A great many, I believe; he is a rich old gentleman.

5995. Do you know that he has assumed a great many nephews into them?—I believe he has not a farm, but he has a nephew interested in the farm with him; and they are looking out for a larger interest.

5996. Did you suggest his taking those two nephews, Brydon and Paterson into those farms?—No, they were in possession long before I took any professional charge.

5997. Did you suggest his taking in any other of his nephews in the county of Roxburgh or Selkirk?—I have not my lists for the county of Roxburgh here; I am speaking from the list for Selkirkshire.

5998. Do you remember recommending to him taking in his nephews with him for political purposes?—As far as I can recollect, I did not.

5999. Were there any cases of single purchases made in the county of Selkirk that year for political purposes, by you or by your authority?—No.

6000. Do you remember the case of Thomas Kemp being inrolled that same year?—Yes.

6001. Do you know from whom he acquired his property?—I think it was from the Messrs. Smith.

6002. Were you aware of the purchase before he made it?—I think, when I was at Selkirk on the 29th or 30th January 1833, I heard of it; I think I saw a letter Messrs. Smith, but to whom addressed I cannot tell; perhaps to Kemp, offering that property for sale.

6003. Did you give instructions about the purchase of it?—No, I have no recollection of that case.

6004. Do you know whether Mr. Rodger purchased that?—No, I saw Mr. Kemp, I recollect; but I have no recollection of how that transaction was conducted; I prepared none of the deeds.

6005. Do you know how the purchase-money was arranged?—No, I have no recollection of it.

6006. Do you think you assisted him with the purchase-money?—I think if I had I should have recollected it; but my attention was directed before I came up here to the case of joint life-rents and joint proprietorships; I did not look into individual cases so much as I should have done, if I had expected to be asked the question; if it is the wish of the Committee, I will endeavour to ascertain the facts where I know any thing of them.

6007. Did you know of any transactions with Mr. Kemp before 1833?—No.

6008. Do you think if you had assisted him with the purchase-money it would have escaped your recollection?—It is not likely that it would have escaped my recollection.

6009. Can you state positively that you did not assist him with the purchase-money?—I do not think I did, but I forget the whole circumstances connected with it; I would not like to speak positively, without endeavouring to inform myself.

6010. Mr. *Ferguson.*] Do you not believe that it is the duty of a political agent to point out to his party all the modes in which legal votes can be created?—I hold that to be the principal duty of a professional agent.

6011. *Chairman.*] You had no acquaintance with Thomas Kemp before?—Acquaintance I had, I knew the man, but I had no transactions with him.

6012. Cannot you state whether you paid the purchase-money for him?—I do not remember that I did, but I will get the information if it is wished.

Lunæ, 13° *die Martii*, 1837.

MEMBERS PRESENT.

Sir Hugh Campbell.	Sir William Rae.
Mr. W. Campbell.	Viscount Stormont.
Mr. E. Buller.	Mr. Dunlop.
Mr. Divett.	Mr. Ferguson.
Lord Advocate.	Mr. Bingham Baring.

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. *Donald Horne*, was again called in; and further Examined.

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6013. *Chairman.*] Do you find in the Juridical Styles a form of life-rent such as was conveyed by William Simpson to his brother?—I never had an opportunity of seeing James Simpson's deed, but in the Registration Court, and I cannot speak to its precise terms; I have looked into the volume of the Juridical Styles sent to me by the Chairman; it does not contain the form of a life-rent disposition, but at pages 15 and 125, it contains such suggestions and instructions as to the alteration in the form of an ordinary disposition, as points out to any one acquainted with conveyancing what the difference should be; and the remark at page 126 shows that the authors did not profess to give the form of every deed in use; at page 648, the form of a renunciation of a life-rent right is given; life-rents have always been known and recognised by the law of Scotland, and, to be effectual against singular successors, it is laid down that it requires sasine: "Bell's Principles," pages 281 and 282.

6014. *Lord Advocate.*] In those pages of the Juridical Styles, to which you have referred, 125 and 126, and the form in 648, do the forms appear to relate to life-rents disponed and granted, or to life-rents constituted by reservation?—To both.

6015. Will you direct your attention to the form in page 648; does that appear to be the renunciation of a life-rent previously reserved, where the fee had been granted to another person?—The form does not specially allude to that; the narrative of the deed is there directed to be taken in accordance to the terms of the deed renounced.

6016. It appears to have been in favour of the said B, he being the previous disponee; and that the person renounces the life-rent; therefore must not B have the fee?—Certainly.

6017. If the said B had the fee, must not the life-rent in A have been a reserved life-rent?—The life-rent may have been by special grant, and not by reservation.

6018. It renounces it in favour of B.?—He was the fiar.

6019. Must not A have reserved the life-rents previously disponed to B; does not that appear to have been the nature of the transaction?—By the style, A seems merely here to have obtained the life-rent, as it is the life-rent that he renounces by the form of that deed.

6020. Will you point out any passage to which you refer where there is a life-rent granted by sale and disposition, the fee being reserved to the person who grants it?—There is no express style of any such deed.

6021. Is there any reference by the styles to a transaction of that kind?—The description given for framing the dispositive clause at page 15, instructs the conveyancer to set forth in the dispositive clause what is intended to be conveyed; whether, for instance, it be a life-rent or a fee; and at page 125 instructions are given to the conveyancer as to the terms of the grant; and then the authors of the volume say, that from these materials they hope that in every case which can present itself, a deed may be so framed as to meet the views of the parties.

6022. Are

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6022. Are the references there made calculated to meet the case of a disposition defining whether the deed is granted in life-rent to A, and in fee to B; or is there any indication of such a deed being known as a disposition of a life-rent where the fee was retained?—A life-rent by deed has been recognised by the law of Scotland and the instructions contained in the styles are perfectly sufficient to enable any conveyancer to frame the disposition according to the instructions of the parties.

6023. Do you find in any of those styles a reference to the case of a life-rent similarly constituted, unless in the case of votes made with a view to the old franchise?—At page 649 the authors state that the form of the renunciation of the life-rent there given is used in extinguishing life-rents, and particularly life-rents constituted for the purpose of voting for a Member of Parliament.

6024. Does it not therefore appear that life-rents constituted for the purpose of voting for a Member of Parliament were those particularly in the view of the authors of that book?—That is a construction of the words of the authors; it is not a matter of evidence, I conceive; the authors say, that form is used in extinguishing life-rents, and particularly life-rents constituted for the purpose of voting for a Member of Parliament; so that it must allude to two separate life-rents.

6025. You were asked on a former day whether you had met in your practice with any instance of a life-rent constituted by grant, with the exception of those for the purpose of creating votes, where the fee was not conveyed?—I have not thought of it since, and do not now remember any instances.

[*The Witness was directed to withdraw.*

[*The Witness was again called in.*]

6026. Sir *William Rae.*] Prior to the Reform Act, life-rents by grant of the superiority were common transactions, were they not?—They were.

6027. Was that a conveyance of property in the terms of the law of Scotland?—Yes; there were two estates; the superiority and the property; it was a conveyance of the superiority.

6028. What is the superiority?—The direct holding of the Crown with a feu-duty, payable by the vassal, which varied very much.

6029. According to the feudal law of Scotland, is not the superior proprietor of the land?—Certainly.

6030. Therefore conveyances of superiority were conveyances of property?—Yes, conveyances of superiority were conveyances of property, the feu-right being the burthen on the Crown right.

6031. As such deeds were common before the Reform Act, there must have been some style-book from which that style could be taken?—The style was very well known to the conveyancers in Scotland.

6032. Would there be any difference between the conveyance of a right of that nature and a conveyance of property?—Not in the style, but in the extent of the grant and nature of the holding grant.

6033. The same style that answered for the one would in reality answer for the other?—Yes, with some variations, the other perhaps not being a Crown holding.

6034. Since the answer that you gave on Friday, that the forms of such life-rents were to be found in various style-books, such as Simpson's and Bell's, you have found forms applicable to the conveyance of property generally?—Certainly I have, applicable to the conveyance of property generally; and the general instructions given to conveyancers by these style-books are quite sufficient, with the knowledge of conveyancers themselves, as to the necessary alterations from one another, according to the nature of the property and the extent of the grant.

6035. Is there any clerk in your office who would have a difficulty in drawing out a scroll of that description to-morrow?—No, I think not; deeds of this kind are always drawn in my office by the clerks or apprentices.

6036. Prior to the Reform Act, conveyances of life-rent on small properties were not common?—I think they were not, in my practice.

6037. Why have they become common since?—Because the Reform Act, in the 8th section, specially confers the right of voting on the life-renters and not on the fiars.

6038. According to the law applicable to the old description of freehold, was not there certain means afforded for ascertaining whether a qualification was nominal and fictitious, or not?—There were.

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6039. If a back bond existed, in that case was the conveyance good?—No, I think not; and I do not think that if there was any thing of that kind the oath prescribed by the old laws could have been taken by a man claiming under such a right.

6040. A back-bond destroyed the qualification?—I think so.

6041. Were not questions competent to be put to the voter to ascertain whether it was a fictitious qualification or a real one?—There was a great deal of discussion upon that subject, but I think for the last 40 or 50 years, in consequence of the decisions in the House of Lords, it was competent to put special interrogatories to persons claiming inrolment.

6042. There was a sort of understanding that questions could be put, which went to ascertain the real transaction?—Yes.

6043. Are any of those guards provided by the Reform Act?—There is an oath in the Reform Act, but it is not so comprehensive.

6044. Are the other guards provided by the Reform Act?—There is no provision by the Reform Act, except the investigation to take place in the Court of Registration; there the judges go into every species of objection, supported by competent proof.

6045. Sir *Hugh Campbell.*] There are certain oaths which can be put to every voter previous to his vote being received?—There are two oaths.

6046. Do you not think they are restrictive of fictitious votes being given?—Certainly, but not in my opinion so effectual as that provided by the old law. The oath I refer to is Schedule (I.) of the statute; the second oath is the oath against bribery.

6047. *Chairman.*] In the book of styles, can you point out any thing which appears to contemplate such a transaction as the conveyance of a life-rent, reserving the fee?—These styles contemplate every transaction that can take place by contract between parties; and I think, with that volume, any person acquainted with the rules of conveyancing, can have no difficulty in forming a deed to correspond with a grant of life-rent, without conveying the fee.

6048. Can you point out any thing which appears to contemplate this particular transaction, or does it leave the whole thing general?—It leaves the whole thing general; that edition of the styles was published before the passing of the Reform Bill, and I believe it is the latest.

6049. Did you continue purchasing joint properties in the county of Selkirk in 1834?—Towards the end of 1833 and the beginning of 1834, both parties in the county of Selkirk purchased a considerable number of properties.

6050. Did you purchase a property, on which five individuals were inrolled in 1834, of houses in Selkirk, beginning with Francis Anderson?—I did; I think I purchased a part of that property, if not the whole of it, in 1833.

6051. They were all inrolled in 1834?—They were.

6052. Did you purchase that expressly for those five persons at the time?—No, I did not.

6053. For whom did you purchase it?—A part of it was purchased from a person of the name of Cameron; it was very much connected with the inn. It was considered necessary to purchase it, as connected with the inn property, in order to give a proper access to that inn; and I purchased it myself, having purchasers in view.

6054. The question was, for whom you purchased it?—At that time I purchased it in my own name, having purchasers in view for it.

6055. Do you remember the price you gave for it?—It was purchased from three different parties; there was Cameron's, I think about 450*l.* or 500*l.*; I paid for that, but I am not sure as to the amount; then there was the tiend yard, I think about 100*l.*; that was from the trustees, for a person of the name of Henderson; then there was another from the trustees of a person of the name of Scott, that was about 350*l.* I think; I cannot tell exactly; but the sums were about those I have stated.

6056. Did you convey this property jointly to those five individuals afterwards?—Cameron's property had to be rebuilt; it was intended at the time to rebuild it. The property purchased from Scott's trustees was next to it, and the operation of rebuilding could not go on so well without purchasing that also, and I purchased that; and after the alterations or additions were made, I sold the whole, with the exception of the property reserved for Cameron, the original seller, to those five gentlemen.

6057. Did

6057. Did you convey to each of them a fifth part of the whole?—I conveyed the property *pro indiviso* to the whole five, reserving what I have mentioned; I did not convey the access to the inn to them.

6058. What was the price they paid you?—I think 210 *l.* apiece.

6059. Did they all of them pay you that?—Yes, all of them.

6060. Who occupy the premises now?—A variety of tenants.

6061. The same tenants who were there before?—No, not when I purchased Cameron's property; the tenants of the inn, Messrs. Mitchell, occupy a part of Cameron's premises.

6062. Does Cameron occupy part himself?—Yes, he has a reserved right of a house and shop.

6063. Is he inrolled upon that?—Yes, as life-renter; that is the only right he reserved.

6064. Was that reserved when he sold it to you originally?—It was a part of the agreement, but it could not be reserved in the deeds; the property was to be taken down, so it could not be described in the deeds; but after the property was rebuilt, I conveyed to him a life-rent.

6065. Was that life-rent you were to convey to Cameron stipulated for at the time you purchased of him?—Yes, I think it was; I am pretty sure that was the case.

6066. Do you know what is the worth of all those premises now?—Yes; there was an objection taken last year in the Registration Court against those five gentlemen; there was an objection lodged against them by Mr. Haldane's partner, Mr. Lees, stating that they were not joint owners, that they had no proper title, and that the subjects were not of sufficient value to afford a qualification; the titles were all laid before the court, and the evidence of value was 55*l.* or 56*l.*, which we were ready to prove, but when the title-deeds were exhibited, the objection was withdrawn; it was supposed to be an objection to the title.

6067. Who received those rents?—They were received by Mr. Rodger, and accounted for to me, till, I think, about a year ago; I am not sure whether Mr. Rodger receives them still, or whether the parties themselves give instructions to collect them otherwise, but he did receive them.

6068. Did you account for them to those individuals?—Yes; but I cannot remember whether it was up to Whitsunday last year, or to Martinmas preceding.

6069. Do you cease now to pay them to those individuals?—I have not collected them since, I think, they took charge of it themselves; or they have instructed Mr. Rodger otherwise to take charge of them.

6070. Did you collect them before that?—No, Mr. Rodger collected them, and accounted for them to me.

6071. Is there any burthen or debt upon the property of any kind?—No, not a fraction.

6072. Do you remember who prepared the disposition which you gave to those gentlemen of this property?—One of the parties, Mr. Burn, writer to the signet.

6073. Do you remember a case of joint proprietors that year, Robert Anderson and two Olivers?—There is a case of Robert Anderson, John Oliver and George Oliver.

6074. Had you any thing to do with that purchase?—Nothing whatever.

6075. Do you know any particulars connected with it?—I know no other circumstances than what appear to have come out in the Registration Court; the purchase appears to have been made from two parties.

6076. You do not know whether there is any burthen upon the property?—No, I do not; they do not appear to have been objected to in the Registration Court in 1834, when they were registered.

6077. There was a case also in that year of James Jardine and Elliott Armstrong; do you know any thing of that case?—They were registered in that year; the property appears to have been purchased from a person of the name of Ballantyne.

6078. Do you know any thing about the purchase at the time it was made?—I had nothing to do with the completion of the purchase.

6079. Were you aware at the time of its being made?—I was; I think that purchase was made in the spring of the year; I was aware some time in the summer of 1833, I think; but, professionally, I had nothing to do with it; it was not negociated or completed by me.

 6080. Do

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6080. Do you know whether it was negociated by Mr. Rodger?—Either by Mr. Rodger or the parties' own agent; I understood the parties had their own agent to transact the business, and it was settled by themselves; I certainly never saw the deeds till I saw them in the Registration Court.

6081. Were you consulted at all about the payment of the purchase-money?—No, I was not; the deeds appear to have been in the hands of a Mr. Stephenson of Langholme; they were sent by Mr. Stephenson to the Registration Court to support their claim.

6082. You do not know who borrowed the money?—No, I cannot imagine that they borrowed the money; they were both independent people; Mr. Jardine is the proprietor of the estate of Arkleton, and Mr. Armstrong lives near Carlisle, I think.

6083. Do you know the lands of St. Helen's, upon which six persons were inrolled that year?—Yes.

6084. On the property of Miss Macdonald?—Yes, it was purchased from her.

6085. Do you know who conducted that purchase?—I purchased it.

6086. With whom did you conduct the purchase, who acted as agent for Miss Macdonald?—Miss Macdonald's own brother, Colonel Macdonald, transacted with me.

6087. Do you remember the price you paid for it?—About 2,000*l.* or somewhere under, I think.

6088. Did you buy that expressly for those six persons who are inrolled upon it?—I think I had their authority for it before I completed the purchase, but I am not sure; I certainly had their authority before the deeds were made out.

6089. Was there a missive of sale previous to the time of the disposition?—I think not.

6090. A disposition was taken directly to themselves?—Yes, it was taken directly from Miss Macdonald.

6091. Did you pay for the property at the time you made the purchase?—Not the whole of it.

6092. How was the price settled?—I forget precisely; a part was paid down, and Miss Macdonald did not wish to get the remainder till the following term of Whitsunday, but it was all paid in the course of a few months.

6093. Do you remember how much was paid at each instalment?—I think 1,000*l.* remained for some time.

6094. Did those gentlemen pay that themselves?—They enabled me to pay it; I paid it to Miss Macdonald.

6095. You had bought the property for those gentlemen?—I had.

6096. Did you receive the whole of their purchase-money from each of the gentlemen?—Yes.

6097. Did you receive it in cash?—It was either remitted to me, or in cash.

6098. Did all the six pay you each their share in money, or give you a bill?—No, they gave me no bill; I believe a part of Mr. George Bailey's is still due to me, that was arranged with his brother.

6099. Has he given you any note or security of any kind?—No; it stands in his account with my firm.

6100. Did Mr. David Dundas pay you?—Yes, through his agent.

6101. Mr. Todd?—Yes.

6102. In cash?—Yes.

6103. Did Mr. Hope also pay you in cash?—Yes, through his agent.

6104. You did not receive a bill or promissory note of any of them?—Not one.

6105. Is there any burthen of any kind on the property?—No, I know that there is not; the title-deeds are in my hands.

6106. Do you draw the rents?—No; Mr. Curle, of Melrose, draws the rents, and remits them to the different parties; he lives within four or five miles of the farm; he accounts directly to the proprietors.

6107. There is a property on which the two Messrs. Douglas were inrolled in that year?—Yes; Alexander and Christopher Douglas.

6108. Did you conduct that purchase?—Mr. Rodger made the purchase by my instructions.

6109. Did he make it for those two gentlemen expressly?—I do not know whether Mr. Rodger knew when he made the purchase that it was for those two gentlemen; but they are men of business, and I believe they prepared their own title.

6110. Did Mr. Rodger purchase that particular property by your directions?—I think so; then when the property was purchased, I communicated the terms of the

the purchase to Mr. Douglas, and he took it for himself and his son, and paid the price.

6111. It consisted of some houses in Selkirk?—Houses and yards, I believe; it is town property.

6112. Before Mr. Rodger purchased that property, did you know it was for sale?—I must have known it, or I could not have given him any instructions; my impression is, that he purchased it by instructions from me.

6113. The instructions alluding specifically to that property?—I think so.

6114. Do you remember what was the price of it?—Something better than 400*l.*, I think.

6115. Did you get that price from Messrs. Douglas?—Yes; and either remitted it to Mr. Rodger, or desired him to draw upon me for it, which is the common way.

6116. Have you a case of joint property by Messrs. Scott inrolled in that year?—Yes, Thomas Scott and John Scott I know were inrolled.

6117. The question refers to William and John Scott?—No, I do not find those names.

6118. The persons referred to are tenants of Lord Douglas?—Mr. Thomas Scott is proprietor of the estate of Peel, and also of Newton, very extensive properties in the county of Roxburgh, and Mr. John Scott, proprietor of the estate of Richleton; but I do not know whether they are tenants of Lord Douglas or not.

6119. Had you any thing to do with that purchase?—No, nothing whatever.

6120. There were two gentlemen of the name of Fair and Shortread; had you any thing to do with that purchase?—I think I corresponded with Mr. Rodger about that purchase, but it was for Mr. Fair and Mr. Shortread.

6121. Was that purchase conducted by Mr. Rodger?—Perhaps it may have been, but I cannot recollect whether he had any thing to do with the deeds, or whether he conducted it and I prepared the deeds.

6122. Did Mr. Rodger make the purchase by your directions, or not?—If he made the purchase, it was by my directions.

6123. For those persons in particular?—Yes, I think for those persons in particular; Mr. Fair was in Edinburgh, and had a communication with me; I think he sent his attorney over to conclude the bargain, and to pay 600*l.* or 650*l.* of the price; there was a small balance afterwards, which I settled.

6124. Were your directions to Mr. Rodger of a general nature, or particularly with regard to that property?—I am sure we corresponded with regard to the property, but perhaps not in the first instance as to whom it was for.

6125. Was it that he had a general direction from you to purchase properties, or that he never purchased any property except by your special directions?—I cannot say that he never acted without special directions, but I think we communicated together about the properties when they were for sale.

6126. Had he general instructions from you with regard to the properties?—He had general instructions to inquire; but I do not think he purchased any without special directions, unless it may have happened that he was pressed for time.

6127. Do you know how the price was paid?—Either themselves or their agents went over to Selkirk, and paid Mr. Anderson, the seller, almost the whole, except a small balance, of which I rendered them an account, and this induces me to think I prepared the deeds; there was a balance of 7*l.* or 8*l.*

6128. Do you know who drew the deeds?—I may have drawn the disposition, but I cannot recollect it.

6129. Do you know who draws the rents of the property?—No, I do not.

6130. They do not pass through your hands?—No, they do not.

6131. There were some cases of joint life-rents also created by both parties in the year 1834, were there not; do you remember the case of John and John Mair Granger?—Yes; they both claim as life-renters; the father is the fiar; he is joint life-renter and likewise fiar.

6132. Do you know who conducted that transaction?—I made the purchase in Edinburgh.

6133. From whom was the purchase made?—The trustees of some person.

6134. Was that a person of the name of Henderson?—I know Mr. Scott, writer to the signet, was the agent; but I do not remember the name.

6135. Do you remember what was the amount of the purchase?—Eight hundred and twenty pounds, I think.

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6136. Did you purchase that for them in the first instance, or was the title taken to yourself?—I do not think the title was taken to myself, but to them direct; I had authority from Mr. Granger to make a purchase for him; not that precise purchase at the time I made the bargain.

6137. After the purchase the conveyance was made out to them?—Yes.

6138. Did you pay for the subjects at the time you made the purchase?—I did at the time, or very soon afterwards.

6139. Did the parties pay you over the purchase-money?—Mr. John Granger, the father, subsequently paid me the 820*l.*

6140. Do you know whether he paid it out of his own funds?—I have no doubt it was paid out of his own funds; I know there is no burthen on the property, for it remains under my charge at this moment; I think I received one year's rent to cover the expenses; at all events, one year's rent was paid me; the property consists of six acres in the county town of Selkirk, now being feued out for building; and I have prepared the feu charters for several cottages, which are subscribed by both the parties.

6141. Mr. *Ferguson.*] Is it a good investment?—I think it is a very good investment, because the lowest calculation of feu-duties of fields in that neighbourhood is 10*l.* an acre; that would make about 60*l.* of feu-duties for 820*l.*; it may be some time before it is all feued, but I think it is good as an investment; I know, when I made the purchase, I was told that if I did not conclude, the opposite party would have it, and they purchased a field from the same parties about the same time.

6142. There is a life-renter also that year, Mr. Charles Baillie; did you draw the deed in that case?—No.

6143. You had nothing to do with that?—I had to do with the registration of the claim; that was a disposition by Mr. Charles Baillie's father-in-law, for love and favour; it was drawn by their own agents, and I know the rents are regularly paid to Mr. Baillie.

6144. There was a life-rent of Mr. Alexander Macdonald and Colonel Macdonald inrolled in that year, the father as fiar and the son as life-renter; were you the agent in that transaction?—I do not recollect whether I prepared that deed in favour of Alexander Macdonald or not.

6145. That deed, or the deed in favour of Colonel Macdonald?—I had nothing to do with the deed of the Colonel.

6146. Did not the Colonel make the purchase and make a conveyance to his son?—It was either a purchase or a grant from a Miss Campbell, his aunt, to whom he afterwards succeeded; it was feu-duties.

6147. You do not recollect whether you had any thing to do with it?—I do not think I prepared any of the deeds; I may have prepared the deed in favour of Alexander, but I had nothing to do with the purchase.

6148. Do you know whether Colonel Macdonald made a similar grant to another son in the year 1836?—Yes, his second; he was not of age in 1834, and he made a disposition also of life-rent in these feu-duties in 1836 to him.

6149. Did you draw that?—I think it probable I did, but I cannot be certain.

6150. That was a gratuitous disposition?—For love and favour, from the father to the son.

6151. Is the deed in your possession now?—No, I think not; it was my general rule to return all the deeds after the Registration Court was over.

6152. Did you act as agent for Colonel Macdonald in other matters besides those?—I am not his family agent; I have had transactions with Colonel Macdonald.

6153. Have you acted as his agent in any other political matters?—I do not think I have acted as his agent in any political matter besides this.

6154. Have you acted as his agent in any matter not political?—I do not think I have made charges to Colonel Macdonald for any matters I have done for him besides this.

6155. Have you been concerned for him in any matter not political?—I never was employed purely professionally by him in any matter but that of preparing this conveyance.

6156. You are not his ordinary agent?—No, I am not.

6157. Do you know who draws the rents of this property now?—Yes; in the Registration Court of 1836, Mr. Andrew Laing, of Selkirk, proved that he drew the rents, and accounted to the parties, according to their rights; Mr. Laing is a general factor in that county.

6158. There

6158. There were some cases of joint tenancies inrolled in 1834, were there not?—A good many.

6159. Do you remember several cases of tenants of the Duke of Buccleuch, who were assumed into leases by dispensing with a particular clause?—Yes.

6160. Were you aware at the time that those persons were making this arrangement, by which they were to be put upon the roll?—I was aware of it about a year before they were brought upon the roll.

6161. Do you know whom they employed principally to draw the deeds, by which they assumed the joint tenants into leases with them?—In the course of the inquiries which I made with regard to William Grieve's case, and other cases, I advised that all sons who were *bonâ fide* in partnership with their fathers, or who had interests in the farms, should apply for registration, and I believe, and indeed I know, that they made application for dispensing to the Duke of Buccleuch's chamberlain; that the chamberlain submitted the matter to his Grace, and that it was agreed to; I think I have one of the dispensations.

6162. Did you suggest that generally, or did you point out particular tenants that were in that condition?—I could not point out particular tenants, for I was not acquainted with them all; I knew the Moffats perfectly well, and I knew one of the Aitchesons, and I knew he was an extensive practical farmer; here is a copy of the dispensation which was given by the Duke on Moffat's lease; the dispensation bears that "William Moffat, in whose favour the preceding lease is granted, by letter dated the 16th day of April last"—that was the 16th day of April 1833,—"addressed to Charles Riddell, esquire, my chamberlain, at Brankholm, expressed his wish that I should so far depart from the clause in the said lease, secluding assignees, legal and conventional, and sub-tenants, as to permit him, the said William Moffat, to assume his sons James and John Moffat as joint tenants, along with him in the said lease; and I, the said Duke, having agreed to the said request, and authorized my said chamberlain to notify the same to the said William Moffat at the time, therefore I do hereby for myself and my heirs and successors pass from the said exclusion of assignees and sub-tenants, to the effect and extent foresaid; and do hereby consent to the said William Moffat's assuming his said sons James and John as joint tenants along with himself, into the said lease, from and after the term of Whitsunday eighteen hundred and thirty-three years, and during the whole unexpired terms thereof, but with and under the whole conditions and stipulations incumbent upon the tenant by the said lease." This is written by James Clarke Wallis, who was apprentice to Gibson and Horne, the Duke's agents, signed at Montague House, the 10th day of July 1833.

6163. Those two were inrolled in 1834?—They were inrolled in 1834, being a year in possession under the dispensation.

6164. You stated that you recommended that all sons who really had a *bonâ fide* interest in property should be assumed?—In my communications with Mr. Rodger, I said that all tenants' sons, who were really tenants and occupants in the terms of the Statute, ought to be registered; and in order that the claim might not be interfered with by the terms of their father's lease, that dispensation was applied for and granted.

6165. It was necessary that they should have that dispensation twelvemonths before they were inrolled?—According to the doctrine laid down in 1832, it was so considered; I did not so consider it.

6166. What was the distinction between this case and the case of Grieve, inrolled in 1833?—That was a case of sub-tenancy.

6167. He had no dispensation twelve months before?—In the year 1833 it was not considered necessary that he should have had it, because the possession and the payment of the rent was proved.

6168. After this dispensation, did Moffat assume his two sons by a deed?—He assigned the lease to himself and his two sons.

6169. By a fresh deed?—By an assignation.

6170. Do you know who drew that assignation?—I think it is very probable that Mr. Rodger drew it; I think that I revised it.

6171. Who was at the expense of that?—The parties themselves ought to be at the expense of it; I believe that Mr. Rodger charged it in the expenses of the registration account; I have never had a settlement of Mr. Rodger's account of the ordinary expenses, but I have settled with him to this effect, that if there is any thing wrong, it is to be remedied; if these expenses were inserted in that account

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I shall certainly charge them against the parties themselves; they may be at present standing in that account.

6172. You have not yet settled with Mr. Rodger the registration accounts of 1833?—I have paid them, but I have settled them under reservation of any errors that may have occurred when I have finally examined them, and I have not yet finally examined them.

6173. If Mr. Rodger has charged you with the expenses of that assignation, have you paid it to him?—The amount of his account is paid certainly, under the reservation which I have mentioned.

6174. Do you know whether or not he charged that against you?—The impression upon my mind is, that he has charged that against me, because he mentioned to me since he came to London that he had so done.

6175. You were not aware of it before?—No, I was not, not having examined those accounts.

6176. Did he mention that he had charged the others also?—He did not mention any particular case, but that he had, in those instances where he had prepared them, charged them in his account of the registration expenses.

6177. You have said that you recommended that the sons should be assumed who were *bonâ fide* tenants of the farm; what did you mean by that?—My understanding was, that many of them had an interest in the farm, but that farm's dispensation was not inserted on the leases.

6178. Mr. *E. Buller.*] What do you mean by having an interest in the farm?—A joint partnership with their father.

6179. That they really had a right to a portion of the stock?—That we do not consider essential in our registrations.

6180. What did you consider to be the right of possession in those whom you recommended to be assumed?—My impression was, that they were partners with their father.

6181. In what way?—In the profit and loss of the farm.

6182. Do you mean by that, that there was a debtor and creditor account between the father and the sons at the end of the year, and that they were entitled to a portion of the profits?—Yes, deducting any debts that might be upon the farm; it is a very common occurrence for a debt to be on the stock of the farm; then the interest would be deducted.

6183. Is it a common thing for sons who are residing with their father to be entitled to a share of the profits of the farm?—Yes, provided they spend their whole time in the management of the farm; they are led farms; there is nobody residing; they are generally under the management of the younger branches of the family.

6184. It was in those cases only you recommended registration?—Yes.

6185. You did not recommend it where a son was residing with his father, and receiving a certain sum, more as wages than as having any interest in the farm?—I was not aware of a case of that kind; if they are parties to the lease they are liable to the rent as well as entitled to the profits.

6186. Mr. *Dunlop.*] Are you not aware that it is very common for sons to live with their fathers more as servants than as partners?—Not in that part of the country.

6187. Sir *William Rae.*] These are all sheep farms?—Yes, all grazing farms.

6188. Will you explain about the payment of the expenses; you say you paid Mr. Rodger certain expenses on account of the examination of certain deeds?—I paid him the registration expenses, and he has informed me since he came to town that some of the accounts for the assignations are included; he came to town in a great hurry; I have paid him the apparent balance on his account, under the reservation that if there appeared any thing wrong it should be set right.

6189. Had you examined it at the time to see what it contained?—I had not had time to do that; and I made that reservation in order to save the matter till afterwards.

6190. *Chairman.*] Were those joint tenancies assumed for political purposes, the parties being extremely anxious to have the franchise?—Certainly not exclusively for political purposes; for it gave them vested interests in those farms which were very important to them.

6191. Do you know that it gave them vested rights?—The deeds did so.

6192. Was it common previous to that period for a father to assume a son into the lease during the currency of the lease?—I was not acquainted with the management of estates in that county prior to the Reform Bill, so that I cannot speak

to

to the practice; but I know that on the Buccleuch estates the tenants are extremely anxious to get their sons introduced into the leases.

6193. Sir *William Rae.*] Why?—They are very desirous to get them into the leases in order that they may succeed to them; they are never advertised.

6194. Their names being in the deed gives them the future possession of the farm?—Yes.

6195. *Chairman.*] Did you know the Buccleuch estates previous to your interference in elections?—No further than general report.

6196. Do you know of any instances of a father assuming his son into a farm during the currency of the lease?—It is merely those that are acquainted with the arrangements between the parties that can know that; I do not know it, for I never heard any thing on the subject.

6197. Do you think it likely that the sons were assumed in equal shares into the lease with the father?—In all the partnerships in farms I have known, they are hardly ever equal shares.

6198. If they were assumed, in order to secure them the lease at their father's death, would they be assumed, each having the seventh part of the farm?—That would depend upon the agreement between them. It proves the *bona fides* between them, that the shares are defined; I know many instances of sheep farmers in the north who were joint tenants before the Reform Bill; they are jointly liable for the rents, but they have not an equal share in the profits of the farm, or in the liabilities.

6199. Assumed during the currency of the lease?—I do not know that; I have no doubt there are such cases.

6200. Since the Reform Bill that has been pretty common in Selkirkshire, has it not?—I think they were in all that year, the two Aitchesons, two Moffats, Robert Gibson, Thomas Ballantyne and James Stoddart.

6201. Viscount *Stormont.*] Andrew Easton?—There are two persons of the name of Easton registered as joint tenants that year, but the father was previously upon the roll as sole tenant; there was no lease produced, but the payment of the rent by the production of a receipt in favour of both parties, George and Andrew Easton, was proved, and they were admitted; they were joint tenants upon the estate of Mr. Pringle, of Clifton.

6202. Did they hold no lease?—No; I believe there was an unstamped missive, but that cannot be produced in court; it was the receipts for the rents which were produced.

6203. Was there a case of Robert Laidlaw?—He was a son of Alexander Laidlaw, who stood previously registered as sole tenant upon that farm; the landlord was Lord Napier.

6204. Was Robert Laidlaw assumed?—He certainly was assumed, because his father previously stood upon the roll as sole tenant; he claimed in 1834, and his father claimed as joint tenant, he having been previously upon the farm as sole tenant, but there was no lease produced; only evidence of the payment of the rent.

6205. *Chairman.*] Have you any knowledge whether or not those persons were really assumed into the farm, receiving an interest, or whether they were only nominally joint tenants?—I have no knowledge personally upon the subject, except that those parties appeared in the Court of Registration, and were ready to be examined upon oath.

6206. Mr. *E. Buller.*] Do you recollect whether the question was put to them, whether they shared the profits of the farm with their father or not?—I do not think that question was put, but I find a discussion about the question being put, whether they had a share of the stock of the farm belonging to themselves.

6207. Do you or do you not feel satisfied that they had that *bonâ fide* interest in the profits of the farm?—They must have a *bonâ fide* responsibility and a *bonâ fide* return from the profits, subject to any demands which there might be on the farm.

6208. Being in the lease, they would be responsible for the rent, but they might be responsible for the rent without having any share in the profits of the farm?—But I do not think that would be a good claim.

6209. Were those facts elicited at the Registration Court, in the case of Willam and George Aitcheson for instance?—Those parties were in attendance to be examined upon oath, and the sheriff in the original Registration Court, Mr. Hambleton Miller, appears to have held that the question on reference to oath could not be allowed, whether they had a corresponding interest in the stock of the farm; he held that personal occupancy and personal responsibility for rent were the two requisites of the statute conferring the qualification.

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6210. Therefore in order to register those persons, it was not necessary to prove that they had a *bonâ fide* interest in the profits of the farm?—So Mr. Sheriff Miller held, and from the concluding part of the 9th section of the statute it will appear that the third qualification is tenancy of not less than 19 years, where the clear yearly value of such tenant's *interest* is not less than 50*l.*; that is the qualification of interest; then the next is one where such tenant shall, for the said period of twelve months, have been in the actual personal occupancy of any such subject, where the yearly rent is not less than 50*l.*; so that there are two qualifications; the one is the qualification of *interest*, and the other the qualification of actual occupancy and of rent.

6211. Then the mere fact of an individual producing a lease showing him to be joint tenant of a farm of sufficient value to give the amount of 50*l.* rent to each tenant, is sufficient to establish his claim to vote?—If he proves that he has paid the rent, and been in the actual personal occupancy of the farm.

6212. That it is not necessary to prove that he has a *bonâ fide* interest in the stock, nor that he receives his share of the profits with the other joint tenants?—Not an interest in the stock; but he is in the actual personal occupancy of the farm; he must or is entitled to receive his share of the profits with the other joint tenants.

6213. Put this case, of a son residing with his father; at length he is put into the lease as tenant with his father; his father has given him no share of the stock, and he gives him no share of the profits; would or would not a son in those circumstances be entitled to registration in Scotland?—He must prove himself to be in the actual personal occupancy of the subject and liable for a rent of 50*l.* a year under a short lease; he then is entitled to be registered; if proof were brought forward that it was a collusive transaction altogether, that is perfectly competent, and he would not be admitted to the registration.

6214. Would not the production of the lease and the fact of his residing upon the farm be sufficient to prove him to be in actual occupation?—I never saw a case of that kind exactly.

6215. Sir *William Rae.*] That would depend on the evidence?—It would depend upon the evidence; there must be circumstances of management to show that he is really a joint tenant to establish the claim.

6216. *Lord Advocate.*] Was there in any case more proved than the production of the lease?—An immediate reference to the oath of the parties themselves; they were examined, or held to be examined upon the question whether they were joint tenants and occupants of that farm.

6217. Mr. *Buller.*] They were asked that question whether they were joint tenants and occupants, but they were not examined as to their share in the profits of the farm?—No, that is not a part of the qualification under the short lease; interest in the profits is the qualification under the third head of the enfranchising clauses of the tenancy qualification; there are five different qualifications in that clause.

6218. It would not be necessary to prove anything more than the possession of the lease and the residence on the property?—The actual personal occupancy of the subjects; I do not know that the residence upon it would carry it without an act of occupancy.

6219. What are the acts of occupancy necessary to be proved beyond the mere production of the lease?—In the cases referred to there was management and sales, and every thing that is done on a led farm.

6220. Management and sale may be done by the son, as the bailiff of his father?—It is competent for the objector to bring evidence to show that he was acting as the servant of his father, and that he was not tenant and occupant of the land.

6221. Was such evidence tendered?—No, none, except by reference to the oath of the party.

6222. In your opinion, those questions would not be admissible?—If the tenant claimed as being in the actual personal occupancy of the subjects, and if evidence were tendered that he had no personal occupancy of the subjects, and that in fact he had nothing to do with the subjects, that he was liable to the rents, as cautioner or surety for his father in the farm, that evidence would have been perfectly competent, and his claim would have been rejected.

6223. You say no evidence was produced beyond the oath of the party?—The objector brought forward no witnesses or other evidence.

6224. Beginning with the case of Aitchesons, can you state whether they were or not put upon their oath as to whether they were interested in the properties of the

the farm?—I think one of them, or one of the Moffats, I forget which, was put upon his oath, and examined by the objecting counsel.

6225. In which court was that?—They are all classed together in my notes; I cannot state that.

6226. Sir *William Rae.*] You have answered as to this and other cases, by referring to certain books; what are those books?—Those are the note books I kept of the Registration Court, containing a copy of the claim, the objection, and my own notes taken at the time.

6227. They are perfectly correctly taken?—There can be no doubt of that; they are private notes, taken myself, of the opinion of the Judges, and any facts which occurred in any case.

6228. Mr. *Buller.*] You have there the minutes of examination of one of the Aitchesons or Moffats; you do not know which?—No, I have not the minute of examination on oath of either the one or the other.

6229. That book contains very full minutes of all the proceedings in the Registration Court?—No, not full minutes, just memoranda for myself of the cases which occurred; and in some cases, where there was nothing extraordinary occurred, I have no note.

6230. There is some entry with regard to the examination of either George Moffat or Aitcheson, you say?—No, my note is in the case of Young, who was also a joint tenant that year.

6231. On what property was he inrolled?—On Mr. Pringle's (of Whitebank) property.

6232. The question referred to one of the cases where a son was assumed into the place of his father?—That was the case; there was a new lease in Young's case.

6233. You have not the minutes with regard to any one of the five cases where tenants were assumed by their father on the Buccleuch estate?—No; I believe the note in the case of Young was the 18th September 1834; this case was taken as the leading case to decide the question whether the sheriff had unduly limited the investigation upon reference to oath; and Mr. Murray, who was one of the counsel, stated the import of the objection; Mr. Urquhart and Mr. Maitland also argued the case; Mr. Sheriff Boswell delivered his opinion; "sheriff's judgment quite right; profits not contemplated; only two points in this qualification; that of tenancy and actual occupation."

6234. Then if evidence had been tendered to prove there was not that division of profits which would constitute a partnership, such evidence would not have been considered as admissible by the sheriff?—No, I do not think that follows; this is a question on reference to oath; evidence on reference to oath is much more limited than that which may be competent to be proved *aliunde*; and if the objector had thought fit to bring forward witnesses to prove that the claimant had no concern in the farm, it would have been competent by witnesses; but reference to oath was made; the question was asked, "Are you joint tenant?" "I am;" "Are you joint occupier?" "I am." Then the question further, and the only other question, would be, "Do you pay 50*l.* rent?" and having answered the two main points of qualification in the affirmative, it was not competent to go into other matters of detail as to the profits of the farm.

6235. From your minutes, it is perfectly clear that the objector is not allowed to press the tenant on his oath with regard to his participation of the profits?—I think that is the result.

6236. But it is not conclusive as to whether evidence tendered by another party with regard to those facts would or would not have been received?—I think that quite open.

6237. You are not aware of any case in which such evidence was tendered, nor do you know whether it was rejected or admitted by the sheriff?—I am not aware of any case where evidence of that description was received in the court which I attended.

6238. In point of fact, all which was proved was the lease and the tenancy of the person holding that lease by his oath, merely stating that fact on oath?—The actual personal occupancy and the payment of the rent.

6239. Mr. *Dunlop.*] You say you attended at the registration of 1834; of course you are more or less acquainted with all the cases which took place at the registration?—I think I was present at the discussion of every one.

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6240. Can you furnish the Committee with any particulars with regard to the case of a man of the name of Moffat?—I have been speaking to the case of the two Moffats.

6241. Can you give the Committee your notes upon that case?—I have mentioned that Young's case was taken as the leading case of all the joint tenancy cases. In the case of John and James Moffat, my notes bear, that the productions were made of the original tack, the assignation by the father; Mr. John Moffat, was in attendance upon notice given to him to be examined upon oath, as a party upon reference to oath.

6242. Was he examined?—I do not think he was called; for Young's case was taken as the leading case, and he was examined; I have no note of Moffat being examined.

6243. *Chairman.*] Have you read the whole of your note in that case?—I have.

6244. Will you read the whole of your notes in Aitcheson's case?—In the same way, the productions were the lease and the assignation, and Mr. Aitcheson was in attendance, but whether he was examined or not, I cannot say; I do not think he was; he was held as examined, because the cases were all appealed upon reference to oath.

6245. Mr. *Dunlop.*] He was held liable to be examined?—Yes.

6246. Sir *William Rae.*] Can you state what passed in the Appeal Court upon that case?—Young's was taken as the leading case. In the original court the sheriff said, "The party can only be asked to swear in the terms of the statute that he has been in actual personal occupancy for the term required, and he has paid rent; three tenants may have separate interests, one stock, another labour, and so on, and it is not competent, in my opinion, to go into such investigation." That decision was affirmed in the Appeal Court, as I have already stated.

6247. Do you consider that vote as implying that the sheriff precluded leading other evidence to prove that the son had no interest in the farm, and that he precluded the putting the question to him upon oath?—No; I think if evidence had been tendered it would have been taken, but I think that the qualification is quite express.

6248. Do you think the qualification good, whether he has interest or not?—My opinion is, that the statute requires only *boná fide* personal occupancy for a period of twelve months, and paying the rent to make out that qualification, and that it has nothing to do with interest, the interest being limited to the prior qualification.

6249. Sir *William Rae.*] Suppose a man were asked, "Do you occupy that farm?" and he says, "I do;" you mean to say it is not competent to ask the man any special question as to his mode of occupancy?—I think the special question should be put before you put the general question; for if you exhaust the reference by the general question, you are precluded from putting special questions.

6250. Has that been so decided by the sheriff?—No, it has not; but I think that is the effect of it.

6251. But you cannot ask first the general denial of a debt or a claim, and then ask specifically?—If you have exhausted the reference, you cannot, in my opinion, go into the particulars; but that is a point of law.

6252. That has not been decided?—No.

6253. *Lord Advocate.*] Have such questions never been proposed, as whether the person occupying the farm had an interest, or the extent of that interest?—Those are the only cases on which there was a discussion; I have given the whole details.

6254. Mr. *Dunlop.*] And there the sheriff ruled that they could not go further?—No; all he said, was that he could be asked to swear only in the terms of the statute; it is competent in all those matters to ask as to special matters, but not, in my opinion, after you have exhausted the reference; but that is matter of legal opinion.

6255. Without personal occupancy it would not, in your opinion, be competent to assume a joint tenancy?—I think the personal occupancy must be proved, as well as the payment of the rent.

6256. Have you any note of the case of Ballantyne?—The productions there were just the same as in the other; but there is no note of any thing further; I know that Ballantyne was in attendance to be examined.

6257. Do you know any thing about Ballantyne the son?—I have seen him.

6258. Was

6258. Was there any case of occupancy in the slighest degree proved in that case?—The shepherd was in attendance to prove the occupancy; he was not called, but the possession was proved.

6259. You do not know that he was a clerk in Edinburgh?—I know he resided in Edinburgh, and that he was the second son of Mr. Ballantyne, of Tennis.

6260. How could a clerk in Edinburgh occupy a farm in Selkirk?—There are many instances of the kind in Scotland.

6261. Instances within your own knowledge?—Yes, instances of gentlemen living in Roxburgh-shire and in Dumfries-shire, who have farms in Inverness-shire and in Ross-shire and in Sutherlandshire.

6262. Are there any instances within your own knowledge of gentlemen who are clerks at gas works occupying farms at the same time?—There is an instance upon the register of a gentleman of the name of Thorburn, a silk mercer or general merchant in Peebles, who keeps a shop in Peebles, and is provost of Peebles, I think, and is joint tenant on the roll of the county of Selkirk.

6263. Can you mention the date of his being put upon the roll?—In 1835.

6264. Do you not think it probable that the gas-man being found a good occupier in 1834, might encourage the provost to become an occupier in 1835?—No, it could not, for he must have been an occupier before Ballantyne's claim was given in.

6265. Might not the one case be the cause of the other claim being made?—That I cannot say.

6266. Does not this case of Ballantyne completely destroy what you stated, that real occupancy was necessary to constitute a tenant under the Reform Bill, as it at present stands?—I should like to know what real occupancy means; I do not hold it to mean residence on the farm.

6267. What do you consider real occupancy to mean?—Occupying by general management and instructions, and liability for the payment of rent.

6268. Do you think a man occupying as a clerk in the gas-works in Edinburgh is likely to have given many general directions for the management of a sheep-farm in Selkirkshire?—That is an hypothetical question; it is as a partner with his father; I know of my own knowledge that, independently of all political considerations, Mr. Ballantyne, sen., was extremely anxious to get his second son put into this detached farm of Altreeve, he having the farm of Tennis, and that he applied to get him put into one of the leases, his eldest and second son being thus secured in succeeding to those two leases; Thomas Ballantyne is now in possession under both leases, for his father and his elder brother are both dead.

6269. Sir *William Rae.*] What particular advantage would he acquire by putting his son into the lease?—As the general rule, the eldest son would have succeeded to them both, but he was anxious that his second son should have the advantage of coming into one of them.

6270. Both being under the Duke of Buccleuch?—Yes, but separate farms.

6271. Mr. *Dunlop.*] He is in possession of those leases as heir to his father?—He is in possession of the farm of Tennis as heir to his father, and the farm of Altreeve half as joint tenant and half as representing his father.

6272. Does he occupy those farms?—I do not know any thing of that young gentleman since his father's death; I do not know whether he has returned to the country, or is still in Edinburgh.

6273. *Chairman.*] You stated, that you were present when the oath was tendered to Moffat, or one of the Aitchesons?—I think it was to Young; it was held as tendered to all, but I do not recollect whether they were sworn; they were held as being sworn, in order to bring them up to the Court of Appeal, but Young was actually examined on oath.

6274. Were all the others prepared to take that oath?—Yes, they all attended both courts, and they stated no difficulties.

6275. Are you aware of any circumstances since, which have shown that any of those parties were not really joint tenants of the farms on which they claimed?—No, not any circumstance.

6276. Are you aware whether old Aitcheson has died since that?—I am aware that he has.

6277. Are you aware as to the settlement which he left at his death?—No, I never saw it.

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6278. Supposing he left a will, disposing of this farm as belonging entirely to himself, both stock and lease, would the claim of his sons have been a fictitious one?—I do not think that he would have been entitled to have executed such a settlement; I should say that such a settlement would not have a legal effect.

6279. Supposing he had executed such a settlement, and that under that settlement the lease and stock were both disposed of entirely by old Aitcheson, does not that show that the sons had no proper title as joint tenants?—Old Aitcheson could not dispose of his lease past his eldest son, even if he had not previously executed an assignation; but having executed an assignation in favour of the sons, he could not, by any *mortis causâ* settlement, defeat that assignation; it may show what the parties themselves thought.

6280. If old Aitcheson made a will, leaving away those farms entirely as sole tenant, and the sons subscribe to that will, and took possession of whatever they had come into by their father's settlement under the terms of that will, does not that show that old Aitcheson considered himself sole tenant, and that the sons themselves so considered it?—It would certainly convey old Aitcheson's opinion to that effect.

6281. If the sons did not dispute that will, would it not also prove their opinion?—Certainly.

6282. Sir *William Rae.*] Supposing you did not know what the circumstances of the father were?—He was a very wealthy man as a farmer; I understand they are all of them wealthy.

6283. Supposing this will to have contained provisions, giving that wealth to his two sons in certain proportions, conveying one of the farms to the eldest son, and another to the younger one, and setting forth that if the eldest son disputed his will he thereby forfeited all claim under the will, do you think the conclusion to which you have come, in answer to the question last put, is a good one?—Certainly not; it would be a question then between the sons, of prudence, what they would do after their father's death; but it would not prove any previous nominality in the original transaction between them.

6284. Viscount *Stormont.*] Each of the sons was assumed into a seventh part of the farm?—I think that was so; the rent was about 600*l.* a year.

6285. That being the case, had the father the power by his will of disposing of the whole lease?—Certainly not; even without that he had no power of disposing of the lease; the lease must go to the heir, and therefore I think the clause in Aitcheson's will, declaring that the eldest son should get nothing under the will, if he disputed it in any way, was a very prudent clause on the part of the father.

6286. He could not dispose of the seventh part of the lease belonging to the second son?—Certainly not.

6287. Therefore, if the father has disposed of the whole lease by his will, it was not competent for him to dispose of that seventh part?—Certainly not; it was not binding upon the son, a previous assignation having been executed under the authority given by the landlord.

6288. *Lord Advocate.*] Was it not possible he might execute that assignation to his sons by the authority of the landlord, to give them a franchise, although they had no real interest in the farm?—That may be a possible case, but I do not think that with such a gentleman as Mr. Aitcheson it was probable.

6289. Sir *William Rae.*] Supposing the deed to have borne these terms, "Declaring always, as it is hereby specially provided, and declaring that if my said son William shall claim possession of any of the said farms, as my heir-at-law under the existing leases thereof, or in any other manner of way otherwise than as here provided, or if my said son William shall in any other respect refuse effect to this present deed of settlement, then and in either of these cases he shall be excluded from all share and interest in my succession, and shall forfeit all right and title to the whole provisions hereby conceived in his favour;" would that make any difference in your answer to the former question?—The framers of that deed must have known that old Mr. Aitcheson was exercising a power which was not in him, and therefore they put that clause of forfeiture into the settlement, in order to secure the concurrence of the sons, whether the previous arrangement was in the terms of the settlement or not.

6290. Mr. *Dunlop.*] Is it not perfectly clear from that deed that Mr. Aitcheson had no intention of assigning over to his sons a *bonâ fide* interest?—I think quite the

the reverse; for if Mr. Aitcheson had not actually assigned his part of those leases he might have made his settlement without putting that clause of forfeiture in it against the eldest son.

6291. Does it not appear probable from that will, that he was aware of some legal claims that his sons might have in consequence of the portion of the lease which had been assigned, but that he by his will was determined to forfeit the right they had so acquired?—No; I think the clause of the will which has been just read is only directed against the eldest son; and that the old gentleman, having no power by the settlement to assign the leases, would have put in the clause even if they had not been divided with the sons previously.

6292. That clause of the will being only directed against the eldest son, it appears that Mr. Aitcheson did not think it necessary to defeat the claim on the part of the other sons?—I presume not; but I have not read the other parts of the deed.

6293. Would you not, from his having taken no care whatever to defeat the interest of the other sons, infer that he regarded the whole as a colourable transaction?—No; I cannot draw that inference from the clause of the deed which has been read.

6294. Does not that give you the impression of its being merely a colourable transaction when a party wills away that portion which had been by this transaction transferred to another party?—If he had willed it away without that declaration of compulsion on the eldest son, I would have put that construction upon it; but when he puts in a clause compelling the eldest son to conform to it, I do not.

6295. Was it possible for him to have had the power without putting in the compulsory clause?—I cannot answer that question without examining the whole will.

6296. *Chairman.*] You stated that the person who made that will must have known he was exercising a power which was not in him?—I think so, or there would have been no necessity for the compulsory clause.

6297. Do you think that refers to the joint lease of this farm in which his son was tenant with him?—I do not know, for I never saw it till this moment.

6298. Did not you say that the eldest son would take that lease as a matter of course?—So far as it was in the father at his death, he would.

6299. If there was not such a compulsory clause against the second son who was a joint tenant, would not that induce you to suppose the compulsory clause did not refer to joint tenancy?—The second son equally takes under the deed; he is not restricted.

6300. The second son was the joint tenant; the father leaves that farm as if he was himself sole tenant; there was no compulsory clause directed towards the second son, he not being mentioned as connected with that farm; does not that prove that neither father nor son considered he was a joint tenant of that farm?—No, I do not so consider it.

6301. Mr. *Ferguson.*] Is it competent to any court to inquire into the cases of losses and profits in a joint tenancy?—I think not, under the fourth qualification.

6302. In the case of father and son, may they not make a division suited to their own purposes?—I conceive so, and that that is the practice.

6303. Would you not consider it inquisitorial if any court assumed to themselves the right of inquiring into the distribution of private property?—Under that qualification of the statute it has never been considered necessary to do so; and I think an inquiry into private matters where it is not necessary, ought not to be made.

6304. *Chairman.*] With regard to joint tenancies created in 1833, and registered in 1834, you say that Mr. Rodger rendered you an account of the assignations?—He rendered me an account of the general registration expenses, and he has stated to me since, that the expense of the assignations was included.

6305. Have you rendered that account to any one?—No, I have not.

6306. To whom do you look for payment of that account?—To Mr. Pringle, of Whitebank; that account I did not get from Mr. Rodger for some time after he ceased to be agent; very nearly eight months or a year after he ceased to be agent; I think it was the end of 1835, or the beginning of 1836, when I received the account.

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6307. This account of Mr. Rodger he did not render till two years after he had paid those sums?—He had not paid them, they were charges of his own; he had rendered accounts to me once or twice, but I had no settlement with him till the end of 1835, or the beginning of 1836.

6308. You had no settlement with him till three or four years after you were appointed agent?—Three years, I think; when Mr. Rodger told me he wanted a little money, he got it.

6309. You were appointed agent in the beginning of 1833; he ceased to be agent in 1835?—Yes.

6310. And you did not get the account from him till nine or ten months afterwards?—Not till the end of 1835.

6311. Had you any settlement with him in the mean time?—No final settlement; he had money when he wanted it.

6312. The account for the expenses of those drafts would not be rendered to you till the end of 1835?—I think not; it may have been in some previous account, but I am not aware of it.

6313. You have not rendered this account to any one?—No, only I have let Mr. Pringle know how the account stood, as far as I could.

6314. Have you told him of those expenses being included?—No, for I was not aware of it myself till I came to London.

6315. Do you recollect Francis Binney being inrolled in 1834?—I do.

6316. Do you know who purchased that property?—That property was purchased from a person of the name of Nicholl by Mr. Rodger.

6317. Had he your instructions for that?—He had general instructions, if he had not special instructions; I think he must have corresponded with me upon the subject.

6318. Did he purchase the property for any one in particular by your directions?—He purchased the property, and took the disposition from Nicholl to himself.

6319. Was that by your directions?—I do not remember whether there were any special directions or not; I think he found it necessary to take a disposition from Nicholl, because Nicholl was afterwards a little inclined to recede from the bargain.

6320. Did you give him any general directions as to purchasing properties?—No general directions to purchase properties without communicating with me.

6321. If he took the title to himself in the first instance, was not that in consequence of your directions?—I think he would communicate to me, unless he had not time to do so.

6322. With an expectation of your taking that property off his hands?—With an expectation of some person taking it off his hands; for in 1834 I had a variety of purchasers; some gentlemen wishing to get fields instead of house property; others wishing, again, to take house property; Mr. Rodger in general found the people for whom the property was intended when the agreement for sale was made.

6323. Were those gentlemen purchasers for political purposes?—The object certainly was to obtain the franchise; but, at the same time, to get as good an investment as possible for their money.

6324. You had a number of willing persons provided to take those investments in Selkirkshire?—I do not mean to say a large number; but some gentlemen applied to me to purchase property for them in Selkirkshire affording the franchise.

6325. Had Mr. Rodger instructions to purchase such properties as he could?—He had directions to send me particulars of all such properties, as he became acquainted with them; and generally in the months of December and January there were a great many properties for sale, particularly this year.

6326. In this case he took the title to himself?—He did.

6327. Through whom did Binney afterwards become purchaser?—Through me; I know I had authority from Mr. Binney to purchase a property for him.

6328. Did he pay the purchase-money?—No, the purchase-money is not yet paid; there is a debt over the property, I think, correspondent to its value; that debt cannot be discharged until the person, who is a minor, is of age; I believe he will be of age this spring; I recollect being consulted about the power to discharge the debt.

6329. What is the value of the property?—I think about 150*l.*; from 140*l.* to 150*l.*

6330. Who

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6330. Who drew the deeds?—I believe that Mr. Rodger drew all the deeds.

6331. Was it you who got Mr. Binney's authority to make that over to him?—Yes, to purchase the property for him.

6332. Do you think Mr. Rodger gave in the expense of those deeds to Mr. Binney?—I presume he charged them to Mr. Binney's account.

6333. He did not charge the expense of those deeds to you?—No.

6334. Is Mr. Binney a person in good circumstances?—Yes.

6335. Able to pay for a purchase of this kind?—Yes, a great deal more; he was for a long time in England as a superintendent of improvements, and I know, from communications made to me in the course of his private affairs, he got money with his wife; and I also know he succeeds to some valuable property at Ancrum in right of his father, who is a very old man; and he is in very good employment now; he is overseer at Bow-hill.

6336. Did Mr. Binney acquire a property in Roxburghshire about the same time?—Yes.

6337. Were you employed in that?—I was not the person that arranged the deeds; he made a purchase of a field.

6338. Had you any thing to do with it?—Yes.

6339. Did you purchase the property in the first instance?—It was purchased through me, but I was not the purchaser, I think.

6340. By whom was the price paid?—The price was paid by the parties themselves; but there was a heritable debt upon the property; whether that amount still remains to an extent of a certain portion of the price, I cannot say.

6341. Has Mr. Binney paid any part of it?—He has paid the difference between the heritable debt and the original price.

6342. Was that considerable?—I do not recollect that it was; I have not looked into the particulars of the Roxburghshire matters yet.

6343. Do you recollect whether the heritable debt still remaining on the property Mr. Binney purchased forms a large proportion of the price?—No, not above one-third, I think.

6344. Do you remember a case of William Matheson, gardener to the Duke of Buccleuch, at Bow-hill, the same year?—I have the case of John Matheson, gardener to the Duke of Buccleuch.

6345. He purchased a property that year, and was inrolled upon it?—He did purchase a property that year upon which he was inrolled.

6346. Was that a purchase made with Mr. Rodger?—It was made by my orders; that was purchased by a person of the name of William Paterson, I think, by Mr. Rodger.

6347. To whom was the title taken in the first instance?—To Matheson direct.

6348. *Lord Advocate.*] Who instructed you to make that purchase?—Matheson himself instructed me to make a purchase, but not that individual purchase.

6349. You saw him?—Yes.

6350. Did Mr. Rodger make the purchase in the first instance, or did he communicate it to you?—I think he made the purchase by my authority, and communicated it to me.

6351. Was that in consequence of a general direction?—I am not sure whether it was done in consequence of a general direction, or whether we had special correspondence upon the subject.

6352. Who paid the purchase-money in that case?—I enabled Mr. Rodger to pay the purchase-money.

6353. At the time of the purchase?—I presume at the very moment of the purchase.

6354. Did you receive the purchase-money from Matheson?—I did not.

6355. Did you ever receive it?—Mr. Matheson explained to me the situation in which his matters were, and I advanced him that money, or rather my firm advanced him that money, and took an acknowledgment from him for it.

6356. What was the amount?—Two hundred and twenty-five pounds was about the whole outlay.

6357. Did you advance it out of your own fund?—I did, out of the fund of my firm, and I took an acknowledgment from him, saying, "You have advanced for me the sum of 225 *l.*, being the price of the subjects purchased by me from William Wilson in Selkirk; I request of you to debit my account therewith, and to complete my title, which you will retain until I have settled with you; and I am," and so on.

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6358. *Lord Advocate.*] Have you any other security for that?—None, for I consider Mr. Matheson's security perfectly good; he explained to me the situation of his matters.

6359. *Chairman.*] Do you know who has received the rent since that period?—I think Mr. Rodger.

6360. Do you know that he has accounted for them?—He has to me.

6361. Viscount *Stormont.*] Has Mr. Matheson paid you that account?—Since I came to London I have received a letter from Mr. Matheson, dated the 4th March, sending me a draft on London for 200 *l.*

6362. What does Mr. Matheson state?—He says, "It was my intention before now to have paid the contents of my obligation to you in 1834, but I delayed it until I could see yourself; now I am told in the papers a great noise is made about fictitious votes, and I did not wish to be considered one of them. I send you 200 *l.* sterling by the annexed draft, and when I get the rent from Mr. Rodger I shall send you the rest." I have kept that annexed to the draft; I had a communication with him in October last; he then explained to me that he could easily get the funds, but that he did not wish to be under obligations to any body, and that he would be able to make it up for me in a very short time.

6363. Sir *William Rae.*] Did he state the time?—I think he led me to believe it would be very soon after Martinmas last.

6364. Did you apply to him?—No.

6365. According to your knowledge, was that letter the effect of any application or communication made by you, or any body connected with you, to Mr. Matheson?—Certainly not by me, or any person connected with me, or by my authority, for I have avoided any communication with any individual since this commenced.

6366. Viscount *Stormont.*] From communications with Mr. Matheson, were you satisfied he was a man of sufficient means to pay that debt?—Certainly, or I would not have lent him the money.

6367. He explained his circumstances at the time?—Yes.

6368. In what situation is he?—He is chief gardener at Bow-hill; he was before that in East Lothian with Lord Dalhousie.

6369. He is a man of some substance?—I know he is.

6370. *Chairman.*] What were the circumstances he stated to you at the time he borrowed the money?—I have no objection to state every thing to the Committee, but as the evidence may go abroad to the public, I do not think I could enter with propriety into those matters.

6371. The question is not with a view to eliciting any thing private; but did he at the time show to you that he was a person who had the means?—He explained to me that he had the means, but that it was not convenient for him to draw them in in a short time; but I was perfectly satisfied that I should receive that money from him.

6372. Viscount *Stormont.*] You consider him to be a man in good circumstances?—Oh yes, very good circumstances; a highly respectable person.

6373. *Chairman.*] Are you in the habit, as a man of business, of lending money to persons in good circumstances to purchase property?—I am afraid it is too much the habit in Scotland; I have done it sometimes without purchasing property.

6374. Had you ever any previous transaction with Mr. Matheson?—No.

6375. Were you employed by him before?—No.

6376. Was he a private friend of yours?—No.

6377. Are you in the habit of lending money to persons not private friends, and by whom you had never been employed before?—No, but I was perfectly satisfied by Mr. Matheson's explanations that I should be perfectly safe in this case, and I did it.

6378. Sir *William Rae.*] Is that the only case in which you advanced the whole or any of these purchases?—I think it is the only case in which I have made any such advance myself.

6379. *Chairman.*] Do you remember the case of George Scott, who purchased a property, and was inrolled in 1834?—I had that case registered in 1834.

6380. Did he not make a purchase of property from a man of the name of Ballantyne?—The property on which he was registered was purchased from a man of the name of Ballantyne.

6381. Had you any thing to do with the purchase?—No.

6382. Had

6382. Had you any thing whatever to do with the transaction?—Yes, my firm lent Mr. Scott 200*l.* on heritable security on that property; but it is not our own fund, but the funds of a private client, a lady.

6383. Who concluded that purchase?—I presume his own agent; I believe Mr. Rodger is his agent; indeed I know he is; he applied to us for a loan for Mr. Scott, and he got a loan of 200*l.*; and there was a heritable security taken in the name of my partner, Mr. Rose; and it is a very common occurrence, when persons have small sums to put out, to take a security in the name of one of the partners of the house, and to place it to the account of the lady whose money they have.

6384. Is the 200*l.* the whole value of the property?—No, not the whole; I think Mr. Scott paid upwards of 300*l.* upon it, and he laid out a very considerable sum afterwards in embellishing and improving it; he is a flesher; he carries on a very extensive business as a flesher, as extensive as Selkirk will afford, and is a man in thriving circumstances.

6385. Did you make out the disposition?—No.

6386. Did you make out the bond?—I think my partner made out the heritable bond, and that the charges were deducted from the loan.

6387. Are the Committee to understand that Mr. Scott has paid the expenses of that bond?—Certainly.

6388. Does that bond bear interest?—Yes.

6389. What interest?—I think four per cent.

6390. Has interest been paid upon it?—Yes, I think fully paid up to Martinmas last.

6391. By whom?—By Mr. Scott himself, to Mr. Rose; he pays it to our house.

6392. Not to Mr. Rodger?—No, he had a payment of 20*l.* for interest since Martinmas.

6393. He pays it direct to your house?—Yes, the last payment I know was direct; whether it has been so all through, I cannot say.

6394. Did you know any thing of Scott before you made this advance?—Yes, I knew a good deal of him before that.

6395. Had you any transactions with him?—I had a large butcher's bill with him; I retired to Selkirk in 1833; Scott supplied me during that time; but I knew him for years before that time; but I know the property was worth double the loan after his improvements.

6396. Do you know whether the account for the disposition has been rendered to him?—It has never been rendered to me.

6397. It cannot have been rendered to you among the other charges made to you?—No, certainly not.

6398. Viscount *Stormont.*] What do you consider the worth of Scott's property?—I think it worth 25*l.* a year.

6399. Does he occupy the whole of it?—He resides upon it, and has his butcher's shop and slaughter-house in the back garden; he may have let part, but I cannot speak to that.

6400. *Lord Advocate.*] Was Scott enfeoffed?—Yes; I am confident he was.

6401. Is there enfeoffment taken on the heritable deed?—No, I think not.

6402. Is it then a good security?—I hold it to be a perfectly good security; but it is in the power of Mr. Scott to defeat it if he chooses to borrow money of another person, and he gets enfeoffed first.

6403. *Chairman.*] Do you know a purchase made by John Johnstone?—Yes; he was registered in 1834.

6404. Did you lend Mr. Johnstone any part of the money?—It was purchased from a person of the name of M'Gregor in November 1833; we lent Johnstone a sum of money on a similar security.

6405. What was the price of the property?—I do not recollect; it was considered a security ample at the time.

6406. What was the sum you lent?—Two hundred pounds, I think.

6407. Was it through Mr. Rodger you lent him that money?—Yes.

6408. Did you lend him that out of your own funds?—No, out of the funds of the same lady I have before referred to.

6409. What were the reasons of your making this loan to Mr. Johnstone?—The security was considered perfectly good.

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6410. Has he given you a heritable bond?—He has given Mr. Rose a heritable bond.

6411. Is there enfeoffment taken upon it?—I cannot say whether enfeoffment is taken upon it.

6412. If it has not been taken, is the security good?—It would be in Johnstone's power to defeat it by borrowing of another party, who would get previously enfeoffed.

6413. Did you know Johnstone before?—I knew him in 1833; I knew he was a very industrious man, carrying on a very good business as a master tailor; and he had a good deal of family employment for my boys at the time I lived in that neighbourhood; and at this moment he has furnished every thing required for a young man under my charge at a school at Galashiels.

6414. Does the bond bear interest?—Yes.

6415. Has that been paid?—Yes, I understand it has, whether to me direct or through Mr. Rodger I cannot say; but I am sure I owe him more under separate obligations than any balance of interest which can be due.

6416. Do you know of a purchase by a man of the name of John Forest?—He was registered in 1834.

6417. Had you any thing to do with that purchase?—No; it is possible I might have known of the purchase going on, but I had no payment of the price, nor any thing to do with the price.

6418. There was John Scotland inrolled in that year; do you know the circumstances attending his purchase?—He was registered in 1834 by purchase from a person of the name of Hogg.

6419. Was that purchase of Scotland through Mr. Rodger?—I think it is very likely that bargain was made by Mr. Rodger; but I had nothing to do with the completion of that.

6420. Had Mr. Rodger any intimation from you as to whose name was to be put into the disposition?—It is very likely he would make the bargain by a missive, not knowing who was to be the purchaser.

6421. Did you instruct Mr. Rodger whose name to introduce?—Yes; I do not know whether the deeds were prepared by Mr. Rodger or by Mr. Scotland's own agent.

6422. Had you any thing to do with the purchase-money?—No, nothing.

6423. Archibald Douglas, who was inrolled that year, is a clerk in your office?—Yes, he is.

6424. Was it by your instructions that property was purchased for him?—Yes, I gave directions to Mr. Rodger to purchase for him.

6425. Was the purchase-money paid to Mr. Rodger?—Certainly it was, by us.

6426. Did you advance it out of your firm?—Partly; but it is all now paid, except 40*l.* or 50*l.*; I think about 50*l.*, perhaps, after charging him regularly with interest in our books.

6427. What was the price of the property?—I think about 200*l.*, or above 200*l.*

6428. How much did you advance?—Perhaps I might have paid the whole to Mr. Rodger, but I know there was only 50*l.* left a short time ago; it was repaid by instalments, as he could afford it.

6429. Have the rents been paid to you or to Mr. Douglas?—The rents have been regularly received by Mr. Douglas from Mr. Rodger; he is from that part of the country, but I do not know exactly what place.

6430. Were there any other properties purchased that year for which you advanced the money, as you did for Scott and Johnston?—No, I do not think there were.

6431. *Lord Advocate.*] Do you know of a purchase by a person of the name of Bainbridge, in 1834?—He was registered in 1834; it was a purchase from a person of the name of Hope; I had nothing to do with the settlement of the price.

6432. Do you know whether the money was advanced?—I have no doubt Mr. Bainbridge paid the money himself, but I was not the party through whom it was settled; he lives in the immediate neighbourhood of the county.

6433. Do you know anything of Mr. Patten's vote in 1834?—He was registered in 1834, but he lodged his own claim.

6434. Were you consulted by any body upon it?—No, not in the least; on the contrary, he was considered a neutral at that time, and he did not vote at the election in 1835.

6435. Viscount

6435. Viscount *Stormont.*] Do you remember the case of James Hogg in 1834?—Yes, James Hogg, the Ettrick Shepherd, the poet.

6436. What did he claim as?—He claimed as a tenant for life; he claimed in 1832 also, and thought he had established his tenancy under letters of the late Duke of Buccleugh, and also the late Duchess of Buccleugh, but an objection was taken that he had not a stamped lease in 1832. He then procured a stamped lease from the present Duke, upon the narrative of the previous obligations by his father under the letters that had been granted.

6437. How long had he held it?—He had been there for several years before.

6438. Was there the case of John Boa and three others in 1834?—Yes; they claimed as tenants under long leases.

6439. What length of lease was it?—Ninety-nine years' lease, commencing I think in 1792; and they had possession from 1792 or 1793, whatever the year was, downwards. They were rejected in 1832, for the want of a stamped lease. Some of them were registered in 1833 upon the same lease, but some of them were not registered till 1834; and the nature of their holding is 99 years' leases of a subject yielding 10*l.*

6440. They claimed as leaseholders, not as life-renters?—Not as life-renters. Hogg was the only life-renter.

6441. State the nature of his life-rent qualification?—James Hogg, the Ettrick Shepherd, got a life-rent lease, or a life-rent grant, from the late Duke of Buccleuch, of a small holding, a residence, at the payment of the trifling sum of 5*s.* a year, or something of that kind, during the life-time of the late Duke of Buccleuch; it had not been reduced into a stamped lease; the present Duke of Buccleuch, on a narrative of the previous obligations of his father, granted a lease for life in favour of Hogg.

6442. Were there any leases on the Duke of Buccleuch's estate of a mixed nature of life-rent and long lease?—No; that is the only case of a life-rent that I am aware of.

6443. Mr. *Baring.*] Is it not possible for the owner of a property of the value of 10*l.*, claiming to vote on the possession of that property, to dispose of a certain part of his interest in that property and still retain his vote?—Yes, the owner of property of 10*l.* may have an heritable security over the property on which he has to pay interest, and then there is not a remaining interest of 10*l.*

6444. Although he had no remaining interest whatever in the property, might he not still vote?—Yes.

6445. Do you not consider that to be in opposition to the letter of the Bill which professes to limit the right of voting to the possession of property?—I consider it to be contrary to what may be called the spirit of that part of the statute where the title was not apparent upon the face of the grant; I have taken an objection, but our Registration Courts have held, under the 7th section of the statute, that such bargains are not a condition of the right, but a burthen on the right, and therefore not deductible; there was a case in 1834, of a person of the name of Ephraim Selby, at Minto, claimed to be registered in 1834, upon a property of not much more than 10*l.* value, and upon the face of his title it appeared he had become bound to pay 25*l.* a year to the lady who disponed it to him as the price of the property; our objection was, that when Mr. Selby was paying 25*l.* a year, he could not out of the worth of the land have an interest of 10*l.*, but the court held that the 25*l.* a year was the price of the property; that the price being an annual payment, instead of a payment at once, could not be held a deduction from the rent, the deed appearing to be a real bargain upon the face of the deed itself.

6446. It would be necessary, to prevent this clause of the Reform Act being eluded in the manner referred to, to alter some of the terms of that clause?—I think that if it is resolved by Parliament to alter the terms of that clause, it may be done without affecting the clause in the least; because if all heritable burthens were to be deducted before ascertaining the value, then the 10*l.* interest would remain, but according to the wording of this clause, it is not held good to make those deductions.

6447. Do you suppose there are many cases of the kind you have mentioned?—Yes, I think there are, but I cannot state what number.

6448. A person might borrow upon the security of property without its appearing that such mortgage existed?—If it was stipulated that the party claiming must be enfeoffed in the property, then I think that the lending would be put an end to,

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which takes place without enfeoffment following; and I do not think a fair *bonâ fide* interest of 10 *l.* can be ascertained, without the party claiming being enfeoffed also.

6449. What are the expenses of enfeoffment?—Of small subjects of that kind, perhaps below 5 *l.*

6450. Was not there a proposal to diminish that expense?—There was a proposition some years ago by Sir William Rae, which I thought very favourably of, for altering the style and reducing the expense of enfeoffments.

6451. To what amount might they be reduced in enfeoffments of property under 10 *l.* to 15 *l.*?—I think they could be reduced to from 1 *l.* to 2 *l.*; but that is a very important and intricate question, on which I would not wish to give a very decided opinion.

6452. *Lord Advocate.*] Would making enfeoffment prevent fictitious votes, or might not fictitious votes be made notwithstanding?—The answer I have made applied to deductions of burthens on the property; but I think any thing fictitious would be as much struck at by enfeoffment.

6453. Was not enfeoffment always taken in all cases of votes created under the former system before the Reform Act?—Yes; but that was the mere right of property that was not created, only the Crown's superiority in the property remained in the fiar or vassal.

6454. Would any other object be gained by taking the enfeoffment, than making the heritable security known; but if those bargains would be thereby ascertained, might not a person require a grant of personal security for the amount of the debt?—Certainly; a person might grant personal securities, but if that individual failed, then there would be no preference in favour of the disponer for the amount of his price; he would rank equally with the other creditors upon the value of the heritable estate.

6455. You have stated that in some cases where securities were taken you do not think it necessary for a security of that kind to take enfeoffment?—I have said that I was aware a prior enfeoffment might be taken, but in those instances I apprehended no danger, although certainly the security might be defeated in that mode.

6456. Then where persons were in good credit, they might easily obtain such security on their personal bond?—They might obtain such security on their personal bond, but the disponer would not then be preferable upon the property for the debt; it is perfectly possible to leave a right in the disponer which may be effectual.

6457. The taking the enfeoffment, would only be an effectual guard against persons acquiring such a course, where the personal security was not good to the extent of the price of the burthen on the property?—No, I think it would go further; if nominal and fictitious votes are apprehended to be granted at the present moment by a conveyance of property without any price being actually paid, and if the conveyance remains personal, while at the same time the obligation for the price remains personal, it is perfectly possible for those two parties to set aside the transaction altogether, and thereby defeat the right which the creditor would have upon the disponer's property; it is possible a person may be in good credit at one time, but not remain so.

6458. Are you to be understood to say, that you consider that in case of creditors coming forward as what would afford a sufficient security against such votes being created?—No, not exclusively; I consider that a person would not part with his property for a personal obligation, provided enfeoffment was to follow upon the conveyance, and that he was thereby completely and absolutely deprived of the chance of its being restored to him.

Martis, 14° *die Martii* 1837.

MEMBERS PRESENT.

Sir Hugh Campbell.	Sir William Rae.
Mr. Buller.	Mr. Bingham Baring.
Mr. Divett.	Mr. Dunlop.
Viscount Stormont.	Mr. Ferguson.
Lord Advocate.	

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. *Donald Horne*, again called in; and further Examined.

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6459. *Chairman.*] JAMES BLACKWOOD, who was registered in 1835, is a clerk of yours, is not he?—He was an apprentice of mine at the time; he is now a clerk.

6460. Was that purchase made by your directions?—No, it is not a purchase, he took a feu from Messrs. Grainger, and built premises upon it, and paid for them himself.

6461. You had nothing to do with the transaction, either in giving directions or otherwise?—We prepared the feu charter as agents for Messrs. Grainger; Mr. Blackwood built the premises himself, and I recollect seeing in the Registration Court the draft for the contract price.

6462. Do you know what the price was?—It was not a purchase; it was a building upon the land; it was above 200 *l.*, but I cannot remember exactly how much.

6463. Mr. Blackwood paid it from his own funds?—He had not any at all from me.

6464. Mr. *Buller.*] What age was Mr. Blackwood?—He was more than of age; he could not enter into indentures with us at an earlier age than 16 or 17, and I think his indentures were then about being expired; he was the son of the late great publisher.

6465. *Chairman.*] Had you any thing to do with the case of Charles Scott, tenant in Milsington, who was registered in the year 1836?—I think that was a purchase by Mr. Scott from Mr. Elliott Shortred; I had nothing to do with the negociation of the transaction.

6466. Are you aware of the circumstances attending it?—No more aware than that Mr. Scott purchased the property from Mr. Shortred, who had gone to Ireland.

6467. Are you aware of what he gave for it?—No.

6468. Was that Mr. Shortred's part of the premises bought with Mr. Fair's, and which had been registered the year before?—He had been registered in the year 1834, along with Mr. Fair, and he sold his share to Mr. Charles Scott.

6469. Do you know how the price was settled?—No, I have no knowledge.

6470. Do you know to whom the tenants pay rent now?—No.

6471. Do you know whether Mr. Patten has charge of that matter?—I do not think so; I think Mr. Stephenson, at Jedburgh, is agent for Mr. Scott, and also for Mr. Fair; I know that Mr. Stephenson is the agent for Mr. Scott in other matters connected with his property in Roxburghshire.

6472. Is Mr. Stephenson a political agent?—No, he is not in the least connected with politics to my knowledge.

6473. There is the case of James Grieve and William Grieve, who were registered in that year?—Yes, James Grieve and his son William were registered in that year.

6474. Do you know any thing of the purchase of that property?—I know that the property was purchased.

6475. Do you know the price that was paid for it?—No, I do not.

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6476. Do you know whether they had any assistance in procuring the money?—No, I believe not; not to my knowledge; Mr. Grieve paid for the property himself.

6477. Do you know whether there is any burthen upon the property?—I do not believe there is.

6478. Do you know whether Mr. Patten receives the rents?—I cannot say; Mr. Grieve does not live at any great distance, and probably he receives the rents himself; he lives near Hawick, at Branxholm Braes.

6479. His son, William Grieve, resides in Liverpool, does he not?—He is designed in his claim, as residing in Liverpool; I am not personally acquainted with him.

6480. There was a case of joint life-rents on the farm of Crossleigh, in that year, where six gentlemen obtained a qualification from Mr. Walker, of Bowland?—Yes; George Thompson of Burn House, and five others, were registered in that year upon the farm of Crossleigh, under a disposition from Mr. Walker, of Bowland.

6481. Do you know who arranged this transaction with Mr. Walker?—In the end of 1835, Mr. Walker was in Paris, and he wrote to me, stating that the matter was arranged by himself; and directing me to take the necessary steps for completing the transaction.

6482. Did he give you the names of the parties then?—Yes.

6483. Was that the first time you had heard of their being likely to be inrolled upon that farm?—Yes, some of themselves may have mentioned it to me also.

6484. Previously to that?—I think it very likely that I heard it in conversation.

6485. Do you remember that that was so?—No, I do not, indeed.

6486. Sir *William Rae.*] What was the price which was paid for it?—I do not recollect the total price.

6487. Whereabout might it be?—On the average, 150 *l.* apiece.

6488. Was that paid?—No, I prepared a disposition, and sent it to Mr. Walker, at Paris, for his signature; it was returned to me, and I took the promissory notes of the parties for their proportions of the purchase, and gave those notes to Mr. Walker, on his return to Scotland.

6489. Do you know what became of them?—I presume they are in Mr. Walker's hands, but I do not know.

6490. *Chairman.*] How was the price they were to pay ascertained?—The rent was taken, and it was calculated according to a table of their ages.

6491. Was that in the shape of a bill bearing interest?—A promissory note bearing interest.

6492. What rate of interest?—Four per cent. I understand was the interest, but I have not settled any account with them.

6493. Do you know whether they got a conveyance of half the lands of Crossleigh?—Yes, I know they did.

6494. Do you know the rent of that half?—I think the rent was from 65 *l.* to 70 *l.*; I do not recollect the precise rent.

6495. Who draws the rent of that farm at present?—Mr. Craig, I think; it was proved in the Registration Court by Mr. Craig, the banker, at Galashiels, that he did draw the rents, and it was also proved by Thomas Hall, the tenant, that the sale had been duly intimated to him.

6496. Whose agent was Mr. Craig?—He has authority from the life-renters to draw the rents for them.

6497. Did you act for the purchaser or for the seller?—I acted under the instructions Mr. Walker sent to me, and communicated with the other parties.

6498. Had the purchasers any other agent of their own?—No, I do not think they had.

6499. Do you know whether Mr. Craig is Mr. Walker of Bowland's agent?—I do not think he is his agent, but he may collect his rents; I do not know, but I think he does collect his rents.

6500. The rents of all his farms?—In that district of the country.

6501. Can you state whether he collects those rents for the purchasers, or for Mr. Walker?—Mr. Craig gave evidence in the Registration Court that he collected the half-year's rent last past for the life-renters themselves.

6502. And that he had accounted for them?—I presume so, that he had collected them; I have no note stating whether he had actually paid it, but the rent was only due on the 2d of August, and the court sat late in August.

6503. Sir

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6503. Sir *William Rae.*] What is your proof?—George Craig proved the receipt of rents; Thomas Hall the same, and intimation of the disposition to him.

6504. *Chairman.*] Is Mr. Craig in the habit of receiving the rents for Mr. Walker, in that district?—That is my impression.

6505. There is nothing in that evidence showing for whom he received those rents?—Yes, his evidence was express, that he received them by authority of the life-renters, and was bound to account to them.

6506. That was not contained in your note?—No, my note is very short; I recollect the circumstances.

6507. Do you know whether any of the lease was given back to Mr. Walker, of that part of the farm?—No lease; there was then an agricultural lease current upon the property; those votes were objected to in the Registration Court, and appealed to the Court of Appeal.

6508. There were some voters also inrolled upon the estate of New Hall, belonging to Sir John Pringle, in that year, were there not?—There were four upon the estate of New Hall, belonging to Sir John Pringle.

6509. They were four life-renters?—Yes, of parts of the estate of New Hall.

6510. Do you know how that transaction was settled between the parties?—I do not.

6511. You do not know whether they acquired their right by gift or purchase?—The brother and son, I believe, were by gift; but I did not prepare the deeds; the deeds were sent to me for the purpose of supporting the claim in the Registration Court; and I had nothing further to do with the transaction.

6512. The deeds were prepared by Messrs. Nairne, the agents for Sir John Pringle?—Yes, they were.

6513. You do not know whether they granted any consideration for it?—I have no doubt they granted a consideration; but whether it was in cash paid I cannot say; the Messrs. Nairne's was for an onerous consideration.

6514. Sir *William Rae.*] The disposition bore that?—Yes, it did.

6515. *Lord Advocate.*] Had they the whole farm between them?—No, they were not joint life-renters; there was a portion of the lands of New Hall disponed in life-rent to each of them.

6516. Was that a portion of the ground of the farm, set apart to each, or an aliquot portion of the farm?—It was a special portion of the ground to each.

6517. A portion of rent allotted according to the ground?—There was a special assignation of a portion of the rent, and the tenant, Elliott, came forward in the Registration Court, to prove that the proportions were fair of the cumulo rent paid by him; and that he had actually paid his rent to the life-renters.

6518. Did there appear to be heritable burthens upon the property?—I am not in the least acquainted with the circumstances.

6519. That did not appear on the proceedings?—No, it did not.

6520. *Chairman.*] There is a case of joint life-rents also upon the farm of Whitslade, belonging to Major Pott, inrolled in 1836; do you know the circumstances connected with the disposition to those life-renters, there being eight inrolled upon it?—There were eight, three strangers, three sons and two nephews.

6521. Do you know the circumstances connected with that conveyance?—I did not prepare the deeds.

6522. Did you take charge of them in the Registration Court?—I did.

6523. Do you what was the arrangement between the parties?—The arrangement with Mr. Borthwick was an exchange of property in Mid Lothian for his share of this farm.

6524. What was the arrangement with the others?—The arrangement with Mr. Beresford was a similar exchange in Peebles-shire.

654*a*. With Colonel Scott?—It was for a price.

654*b*. To the three sons, who were all in India?—It was for love and favour.

654*c*. To the two nephews, George Pott Erskine and James Erskine?—I presume, for a price, but I do not recollect the terms of the deed.

6525. Do you remember what was the rent of the farm on which those eight persons were inrolled?—No, I do not; but I know that the proportions conveyed were more than sufficient to confer the qualifications.

6526. Was it just a sufficient qualification conveyed for the purpose?—It was about 11*l.* or 12*l.*

6527. To whom did Mr. Borthwick give a life-rent in exchange in the county of Edinburgh?—To Major Pott.

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6528. Was there any money passed between them?—I do not know the calculation; they were pretty nearly of the same ages, I understood.

6529. The Rev. Isaac Beresford gave Major Scott a life-rent in Peebles-shire in exchange for this?—Yes; I believe the life-rents were not exactly the same, but the calculations were made on a just principle.

6530. Do you know whether in the case of Mr. Beresford there was a dissimilarity of age, and the price calculated accordingly?—I am not acquainted with Mr. Beresford, and do not know the circumstances.

6531. Do you know the price Colonel Scott paid?—No, I do not.

6532. Sir *William Rae.*] Do you know that Major Pott has considerable property in that county and in the adjoining county?—He has very considerable estates in the counties of Selkirk and Roxburghshire; the boundaries of those counties are very much intermixed, and Major Pott's estate lies on the borders on each side.

6533. *Chairman.*] Do you mean that he has a considerable estate in each?—Yes, a considerable estate; I do not know the proportions in each.

6534. Do you know who prepared the deeds of that transaction?—I really do not recollect.

6535. You do not recollect whether it was Messrs. Curle & Erskine?—I think it is extremely probable, Mr. Erskine being Major Pott's nephew, and he is one of the life-rent disponees.

6536. Do you know who receives the rents upon this farm at present?—In the Registration Court it was proved that the intimation of the assignation had been made to the tenant, and that the tenant had paid the rents to the life-renters, or those authorized for them; as for Major Pott's sons, who were in India, I do not recollect that there was any evidence respecting them.

6537. There was a life-rent of Mr. Charles B. Scott, writer to the signet in Edinburgh, in that year?—Mr. Charles Balfour Scott, writer to the signet, was registered in that year.

6538. Did you take charge of his claim in the Registration Court?—I did.

6539. Do you know how he obtained his life-rent?—He obtained a life-rent out of certain lands of Captain Kerr, of Cardona, his brother-in-law.

6540. Do you know how he acquired that; was it by purchase?—By an exchange of life-rents between the two brothers-in-law.

6541. In what county did Mr. Scott give a life-rent to Mr. Kerr?—He gave a life-rent in the county of Roxburgh, over a part of his property in that county, to Mr. Kerr.

6542. Do you know whether in this case there was any difference in age or any money passed?—I think they are very nearly of an age, but that there was some difference in the value of the life-rents obtained by each; but I was not consulted as to the particulars.

6543. What is the nature of the life-rent; is it house property?—No, it is agricultural property or pasture let to agricultural tenants; at least I am speaking of the property in Selkirkshire. It is let to Mr. Anderson, an agricultural tenant, who granted a certificate, with which all parties were satisfied, stating that the intimation of assignation was made, and that he had accounted for the rent to the assignee.

6544. When you were asked whether you knew of any instances of exchanging life-rents, and you stated that you had known two in the county of Edinburgh, were these either of those you referred to?—I think Mr. Pott was one I alluded to.

6545. When you stated that there were persons whom you knew in the county of Edinburgh who had made exchanges, Mr. Pott was one of those?—Yes, I think he was; but I conceived the question to apply to cases of life-rent, with back leases.

6546. You stated that two clients of your own, in the county of Edinburgh, had made exchanges in life-rents?—Yes, Mr. Pott was one of those.

6547. Do you know whether in any of those cases there was any understanding between the parties as to any back lease, or any arrangement of that kind?—I am not aware of any arrangement between the parties, unless it was in the case of Mr. Pott and Mr. Borthwick; and I am not sure whether it was the case there or not; that is, in so far as regards the Mid Lothian property.

6548. Had you any thing to do with the arrangements regarding the farm of Retford Green, on which forty-one life-renters were inrolled?—I had.

6549. Did you conduct that purchase?—I directed the conduct of the purchase.

6550. Who

6550. Who was it who conducted it?—Under my authority, Mr. Clayson conducted it in the first instance.

6551. By whom was the contract of sale taken in the first instance?—It was taken in the first instance by my friend, Mr. Haig; he entered into a contract of sale with Mr. Rutherford, the seller.

6552. What was the reason of its being taken in the first instance to Mr. Haig?—The reason for doing so was this; after so many claims had been given in by the Clifton party in 1835, I understood that this property was for sale, and I was informed that the agent in the sale, Mr. Andrew Dunn, of Edinburgh, had visited Mr. Pringle, of Clifton, and offered the estate to him; I knew Mr. Dunn's political bias, and after I had received my instructions to purchase the estate, I knew that I might defeat my own object by negociating the transaction myself, and therefore I employed Mr. Clayson to negociate it for me.

6553. At the time you made the purchase had you the intention of registering those persons on it who were afterwards registered?—I made that purchase, or authorized that purchase to be made, I think, about the middle of September; at that time the Registration and Appeal Courts were sitting, and all the life-rents created by Mr. Pringle, of Clifton, were under discussion; I advised that the estate of Redford Green should not be allowed to pass into his hands; and I strongly recommended to Mr. Pringle, of Whitebank, to purchase it; I received Mr. Pringle's authority, and I gave my instructions accordingly to Mr. Clayson.

6554. Did you intend that those persons should be afterwards registered?—No; there was no immediate intention of registering upon it.

6555. Those persons agreed afterwards to become life-renters upon that property?—I think it was generally known that I intended to dispose of life-rents upon that property, and I negociated the sales of all the life-rents which appear upon the register upon that property.

6556. Was it never intended that Mr. Haig should have any thing to do with this property in Redford Green?—Never; Mr. Haig cam forward as my friend, under a guarantee that he should have no trouble; in fact, he was acting in trust for me.

6557. Did Mr. Haig never contemplate being a joint life-renter or proprietor upon that farm?—No, I do not think it was ever proposed to him.

6558. To whom did Mr. Haig assign his contract of sale?—It was subsequently proposed to be arranged between Mr. Pringle and his brother, who had returned from India, that his brother should be the proprietor, and that Mr. Haig should assign the contract to his brother; but that arrangement was not carried into execution, in consequence, I believe, of the intention of the brother to return to India, and the purchase was completed by Mr. Alexander Pringle himself.

6559. The contract was assigned by Mr. Haig, with the consent of Mr. Robert Pringle to Mr. Alexander Pringle?—Yes.

6560. By whose instructions was it assigned by Mr. Haig to Mr. Pringle, of Whitebank?—I think by Mr. Alexander Pringle's instructions to me.

6561. Did Mr. Robert Keith Pringle know of the proposal to assign to him at the time?—I believe he was living with his brother; he must have known of it subsequently, because he became a consenting party to the disposition to his brother.

6562. How soon was the disposition prepared to his brother after the sale to him?—There was a long discussion about the terms of the disposition, and a submission to Mr. Richardson, writer to the signet, who issued his award and decreet arbitral, after which the disposition was prepared in favour of Mr. Alexander Pringle.

6563. For whom was the purchase originally made?—For Mr. Pringle, of Whitebank, by his authority.

6564. The contract of sale was taken in the first instance to Mr. Haig?—Yes.

6565. Was there any disposition to Mr. Haig?—No.

6566. Was there any deed of disposition prepared to Mr. Haig?—No.

6567. Was there any minute of disposition prepared and sent to the seller at that time?—Not that I am aware of; I did not prepare the deed; Mr. Clayson prepared the deeds.

6568. How was Mr. Robert Keith Pringle's consent necessary for Mr. Haig to assign that purchase to Mr. Pringle, of Whitebank?—Mr. Robert Keith Pringle's consent was necessary in consequence of his name having been used in the reference to Mr. Richardson.

6569. Was there any deed or disposition of any kind by which he got the interest?—No.

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6570. If the purchase was made for Mr. Pringle, of Whitebank, how came Mr. Robert Keith Pringle's name, to be used?—It was an arrangement between the brothers, which was not carried into effect.

6571. Can you say whether or not there was a deed of disposition prepared and sent to Mr. Dunn, for revision, setting forth that the purchase was for Mr. Robert Keith Pringle?—Mr. Clayson had the whole charge of the deeds; he may have done so, but I am not aware of that; if it was so, it must have been before the proceedings on the submission were brought to a close.

6572. Do you remember the sum which was paid for the property?—Thirteen thousand pounds, I think.

6573. Has any part of that sum been laid upon the property as a burthen?—None; there is a subsisting burthen still undischarged, in favour of a lady who is in America; deeds have been sent out for her signature; my impression is that she is expected home almost immediately, and the money is ready for her.

6574. It is an annuity, is it not?—It is a bond of annuity in favour of the widow of the former proprietor, I think.

6575. What is the amount of it?—We calculated the value to be something between 3,000*l.* and 3,500*l.*; and a sum of that amount was retained to meet the value of it.

6576. What was the amount of the annuity?—I think 150*l.* a year.

6577. Those conveyances were made to those 41 individuals?—They were.

6578. Did you make out the dispositions?—Yes.

6579. Sir *William Rae.*] In all cases?—I prepared the disposition in all the cases, and three of them were revised by the agents for the parties.

6580. How many dispositions were there?—Five.

6581. Were the prices calculated in the same manner by the tables of annuity?—The prices were calculated by me on the part of the seller, and by the agents for three of the sets of disponees upon their parts; there were other two sets that did not employ any agent, because I was in personal communication with them, and they certified their calculations themselves.

6582. Who were the three agents with whom you communicated?—Mr. Primrose, writer in Edinburgh, for one set, for John Park and others; Mr. Primrose, also, for William Ballantyne and others; and Mr. William Rutherford, for Brown and others.

6583. There were two agents who acted for three sets?—Yes; the other two sets did not employ any agent for themselves.

6584. Did you act for them?—No; some of them were professional men, but they did not employ any agent; the original draft of the disposition was revised, and approved of by Mr. George Graham Bell, advocate.

6585. In whose possession are those dispositions now?—In the possession of those parties or their agents, and in consequence of instructions from the Chairman, on Friday last, I wrote letters to Scotland, desiring them to be forwarded here.

6586. Did those parties pay the prices of their respective shares?—They did not pay the whole price in cash, but they paid from 20*l.* to 30*l.* in cash, and gave their promissory note for the balance.

6587. Viscount *Stormont.*] Was that the case with the whole of them?—Yes.

6588. Sir *William Rae.*] Have any of the bills been since paid?—Those bills were indorsed by Mr. Pringle and sent to his bankers; and I understand one or two of them have since been paid; whoever calls at the bank would get their bill, on payment of the amount, with four per cent. interest.

6589. *Chairman.*] Do you know whereabouts was the amount of the interest of each person?—I should say the average of the whole was about 150*l.*

6590. Do you know the amount of each person's interest, how much a year he acquired?—The interests were different in each farm; the estate consisted of five different farms, and the interests of the life-owners of each farm were different.

6591. Was there a considerable difference, or were all of them just above the 10*l.*?—One of the sets was considerably above it; from 12*l.* to 13*l.*; the rest from 11*l.* to 12*l.*, I think.

6592. You stated that there was a burthen of an annuity of 150*l.* a year; was any part of the price of the purchase retained for that?—Yes; and by the contract of sale it appears that was contemplated, and that if discharges were not obtained, the purchaser should be liable only for the rate of interest the Royal Bank of Scotland paid on the deposit of money after a certain period.

6593. Besides

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6593. Besides the annuity to Mrs. Rutherford, were there any other debts upon the property?—Every one was paid off.

6594. At the time of the purchase?—Not exactly at the time of the purchase, because some of the bond-holders would not give their discharge until the next term arrived; but they were paid off at Martinmas 1835, and Whitsunday 1836.

6595. Were they paid off by Mr. Pringle?—The money was obtained from him, and paid, on seeing the discharge put upon the record.

6596. Do you know the amount of the burthens?—I do not know the amount of them; but I know the whole was paid, except about 3,000 *l.* to meet the annuity.

6597. Was the property very heavily burthened, or only slightly burthened, at the time of the purchase?—Perhaps to the amount of 5,000 *l.*; but the first payment of the 3,000 *l.* was made to Mr. Rutherford himself; and it was evident that the heritable burthens did not amount to the balance; a considerable part of them were paid off in November 1835.

6598. Did the burthens affect that estate alone, or did they extend over other lands?—That estate alone; Mr. Rutherford, the seller, had no other property in that county, I believe.

6599. Who draws the rents of those farms at present?—Mr. Oliver, a farmer in the neighbourhood, holds factories for three of the sets of parties; Mr. Swan, of Kelso, holds a factory from another set; and Mr. William Rutherford, whom I have named, holds a factory from the fifth set; and those parties draw the rents, and account to the respective life-renters. Mr. Oliver, I believe, has the general management of the whole estate from all the parties.

6600. Whose tenant is Mr. Oliver?—Mr. Lockhart, of Borthwick Braes.

6601. Is the whole of the Redford Green property in the hands of one tenant?—No; there are four farms, I think; there are more tenants on the farm, either separate or joint tenants.

6602. The Committee have heard of a farm of Redford Green, upon which Messrs. Brydon and Paterson were inrolled?—I believe that is one of the farms; there are a variety of names that I do not recollect precisely upon the estate; but there are East Redford Green and West Redford Green; there is also a farm called Skerringscleuch.

6603. Who are the tenants upon that?—John Linton; there is a farm called Drycleuchlee.

6604. How many tenants are there upon that?—One only, I think; Mr. Walter Scott.

6605. What other tenants are there?—There is Brydon, at Redford Green, and Paterson, at Whittleshiel; but I think that is part of Redford Green.

6606. They were taken in with old Brydon, were they not?—Yes; there is upon West Redford Green, I think, also, a person of the name of Scott.

6607. Has any change been made in the tenancy of those farms since the date of the purchase?—No, they were all agricultural tenants, under seven years' leases, and the term of expiry has not yet arrived.

6608. Sir *William Rae.*] When will the leases be out?—In 1839, I think; I have written, by the Chairman's order, to desire that the leases may be sent up; I think they were all for seven years, from Whitsunday 1832; of course they will expire at Whitsunday 1839.

6609. You said there was no back-tack in any case executed by you; there was no back-tack in this case?—No; the life-renters are in the actual possession of this property, through their tenants, and they were all enfeoffed at the time.

6610. Were those cases keenly discussed in the Registration Court?—Yes, very keenly; every possible objection was taken in the Registration and the Appeal Courts.

6611. Is the game on this estate valuable?—The game is considered valuable; it was let for several years during the late proprietor's occupancy.

6612. Does this lie in the heart of the Buccleuch estate?—In the very heart of the Duke's preserves.

6613. Do you know of a lease of the game to his Grace the Duke of Buccleuch?—His Grace expressed a desire to have a lease of the game of that property; that was intimated to me; I obtained Mr. Pringle's instructions, and I negociated the terms of a lease with his Grace, at, I think, 30 guineas rent.

6614. For how many years?—For 19, I think; I prepared the deed of lease and sent it to his Grace's agents for revisal; they revised it; it was then extended on stamped paper, and signed by the parties.

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6615. That was a *bonâ fide* transaction?—Perfectly, I conceive; I know that acting for Mr. Pringle I got as much as what I considered the value; there was a great deal of discussion in the court about the shootings, and their value; the former tenant who had leased the shootings, Mr. Scott, said he should be happy to give the same rent; the Duke's gamekeeper, James Kerse, was also examined, who said it was worth the rent for a man to make his livelihood by it; I have always heard the shootings highly prized in the district.

6616. *Chairman.*] Do you know the rental of the estate of Redford Green?—The total rental was 471*l.* 10*s.*

6617. There were three single purchases, one in the case of Henry Forsyth, son of Robert Forsyth, advocate at Edinburgh; had you any thing to do with that transaction?—Yes.

6618. That you conducted?—Yes.

6619. From whom did he acquire his qualification?—From a person of the name of Brown.

6620. Do you know the price of it?—I think it was about 250*l.* or 260*l.*; but I am not sure, I have no note of it.

6621. Was that purchase-money paid at the time?—It was paid to Mr. Brown at the time; a draft, I think, was drawn on Mr. Forsyth himself for the amount.

6622. Who paid it to Mr. Brown?—I think it was Mr. Curle, of Melrose, that made the purchase.

6623. By your authority?—Yes.

6624. Did Mr. Forsyth pay you the money afterwards?—Yes, either he or his father; I did not pay the draft.

6625. It was paid in cash?—Yes; Mr. Henry Forsyth was living with me in the country at the time of the purchase.

6626. James Nisbett was registered in 1836?—Yes.

6627. Was that purchase made by your authority?—No.

6628. Do you know who conducted the purchase?—I think it was not a purchase, but one of the original long leases, taken from Mr. Scott, of Gala, and a house built upon it.

6629. Had you any thing to do with that?—No, nothing whatever.

6630. There was a case of Henry Corse Scott?—He was registered in 1836.

6631. How did he acquire his qualification?—An original lease, also from Mr. Scott, of Gala, and buildings were erected upon it.

6632. Did he purchase that?—It can hardly be called a purchase; he contracted with the builder to build upon it.

6633. Did he not give consideration for the lease?—He gave no other consideration than the annual payment; it is a 99 years' lease.

6634. There is a case in the year 1836, brought into the Registration Court, which was rejected, of six life-renters having claimed on a qualification from Mr. Stavert?—I think there were seven of them.

6635. Were those claims sustained or rejected in the original court?—They were rejected in the original court.

6636. Did you take charge of those cases in the court?—I did.

6637. What was the ground of their rejection?—The ground of their rejection was, that Mr. Stavert held his estate under the fetters of a strict entail, and that therefore it was not in his power legally to grant a life-rent that was not defeasible at the will of the subsequent heir of entail; we were anxious to have the question tried; the question was fairly argued and tried, and now we hold it as settled in our court, that it is not in the power of the heir of entail to grant such a deed; Stavert's object principally was to have this point settled.

6638. Were those cases appealed?—Yes, they were.

6639. Were they rejected in the Sheriffs' Court?—They were fully argued in the Sheriffs' Court, and rejected, I think, unanimously by the sheriffs.

6640. Was the ground of rejection in the Sheriffs' Court that the estate was entailed?—I will state the sheriffs' note in the original court; the sheriffs said, "In respect of the entails, the claimant's authors have been recorded in the register of taillies; reject the claim;" in the Appeal Court the decision was affirmed; I was not present at the discussion, being unwell, and therefore have no note of what took place.

6641. Was Mr. Stavert, the person from whom the qualifications were acquired, examined in the Sheriffs' Court originally, at the time the claim was put in?—No, he was not.

6642. Was

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6642. Was he cited to appear before the Appeal Court?—I do not recollect, but it must have been only to produce his original titles, which were obtained out of his agent's hands, which were sent to me and produced in the court.

6643. Are you sure that the ground of rejection in the Appeal Court was, that those life-rents were granted on an entail estate, or that it arose from Mr. Stavert being cited to appear, and failing to do so?—I am quite confident it was upon the same ground as was the ground of discussion in the original court.

6644. You are sure the claims were not withdrawn?—There is another case of the same kind; the case of Pringle, also the case of an entail; and perhaps the case of Pringle might have been taken as a leading case, and held to regulate the other case; but assuredly the appeals were not withdrawn, for it was the wish of both parties to have the point settled by a solemn decision.

6645. Sir *William Rae.*] How many joint owners were put on in the year 1836 by Mr. Haldane and that party?—There were six, I think, by Mr. Haldane.

6646. Were Captain Elliott and his son two of those?—The honourable Captain Elliott and his son; but that added only one, because Captain Elliott was on formerly.

6647. What was the nature of that claim?—Captain Elliott was registered in 1834, as sole owner of some houses in Selkirk; in 1836, he and his son, George Elliott, junior, claimed as joint owners of those houses.

6648. What were they worth?—Something more than 20 *l.*, as appeared in the Registration Court.

6649. Was there any property purchased to make out the vote?—I think there was some additional building made upon the property; by the evidence in the Registration Court, it appeared there was 125 *l.* laid out, and that the tenant agreed to pay rent at the rate of 5 per cent. upon the outlay, which brought up the property to a value capable of qualifying two joint owners.

6650. Was Sir William Scott one of those?—Sir William Scott had been previously registered as a joint owner in 1834, I think, in partnership with Sir Daniel Sandford; Gilbert Elliott was registered in 1836, on the same property as Sir Daniel had stood on; he was rejected in 1835, because the property was proved to be under the value of 20 *l.*; Sir William Scott would have been turned off the roll that year also, had we given in an objection; there was no objection lodged, and he remained upon the roll, and he and Mr. Gilbert Elliott were registered in 1836, as joint owners.

6651. How came Sir Daniel Sandford to be struck off the roll?—There were various circumstances connected with it, but I am not personally acquainted with those circumstances.

6652. Was Walter Haldane's a case of that description?—Walter Scott Haldane was upon the register, I think, in 1832, but in 1835 he had split his property with some individuals in Hawick; an objection was stated against him in 1835, and he was expunged from the roll in consequence of those operations which had taken place between him and his friends at Hawick; in 1836, he claimed and was registered anew, on a part of his own property. In 1835, Henry Ewing and John Wilson, of Hawick, claimed on part of the property belonging to Walter Scott Haldane and his brother John Haldane, the Haldanes having got exchanges of property in Hawick, to give two qualifications in Roxburghshire; in this and in similar cases, there were invariably back-tacks passed between the parties for a specific rent; the tack to endure during the life-time of the disponee.

6653. How many joint agricultural tenants were registered that year on the part of Mr. Haldane?—There was one registered by Mr. Haldane and one rejected.

6654. How many joint tenants on long leases by Mr. Haldane?—I think nine; two of them were renewals.

6655. Were those made so as to create as many votes as the value of the subjects would admit of?—I think so; the first, Thomas Fairgrave, was registered on a *pro indiviso* half of a dwelling-house, disponed to him by Mr. Haldane; the next set, John Haldane, brewer, William Haldane and Robert Turnbull, as joint tenants of one property; John Haldane and William Haldane were previously registered, but they claimed of new in order to make room for Robert Turnbull, which exhausted the value of the property.

6656. Are the Haldanes agents for Mr. Pringle, of Clifton?—I think that they are brothers of Mr. Haldane, the agent; and Mr. William Turnbull was one of his clerks.

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6657. Viscount *Stormont.*] Was this property split two or three times for the purpose of making votes?—John and William Haldane were registered in 1834 as two joint tenants of that property, which they had acquired from Mr. Haldane, senior, who was the post-master, and of course could not vote himself.

6658. Then in 1836 the property was re-split in order to admit Robert Turnbull?—Yes, it was.

6659. Does Haldane, the father, the post-master, reside in the house?—I think he does.

6660. Do you know whether it is the post-master's house, or whether it belongs to his sons?—The deeds produced vest the property in them; and I cannot say any thing more upon the subject.

6661. Do you know whether they pay rent?—I cannot say.

6662. Do you know whether the father is tenant under his sons?—I really do not know the circumstances.

6663. Sir *William Rae.*] Will you state the names of the others; there are two persons of the name of Innes?—David Innes and George Innes were registered in 1836 as joint tenants.

6664. Do you know who they are?—David Innes is described in his claim as residing at Gilmerton; Sir David Kinroch's.

6665. Is he in the service of Sir David Kinroch?—He is merely described in his claim as residing at Gilmerton, in East Lothian; I know nothing personally.

6666. How is the other designed?—George Innes is designed in his claim as residing at the Haining, the residence of Mr. Pringle, of Clifton.

6667. Is there no other description in the claim, or do you know what he is?—I know that that individual is in the service of Mr. Pringle, of Clifton.

6668. Was not there a claim lodged for the huntsman of the Duke of Buccleuch either that year or the preceding year?—Williamson is one of the life-renters of Redford Green; he was registered in 1836 on that property.

6669. Is he possessed of property?—Williamson has had a very nice estate in Roxburghshire to my knowledge for ten years at least, worth at least 200*l.* a year; it is in my immediate neighbourhood, near the banks of the Tweed, where I reside myself in the summer.

6670. He is an individual well connected, is he not?—Very highly connected for a person of his situation; he has a brother a colonel in the East India Company's service.

6671. *Chairman.*] His property is worth a good rent, more than 200*l.* a year, is it not?—I am speaking at random; I really do not know its exact worth.

6672. Viscount *Stormont.*] Was the property left him?—He purchased it.

6673. Mr. *Dunlop.*] He is a man in very good circumstances?—Yes, and very much respected.

6674. Sir *William Rae.*] His being purchaser of a vote did not excite your surprise?—Quite the reverse.

6675. Were there any cases of individual life-renters that year brought forward by Mr. Haldane?—Yes, there were.

6676. What were they?—There were five; Thomas Blackall was one.

6677. From whom did he obtain his life-rent?—From his brother, residing in Selkirk.

6678. Was it paid for?—I could not learn.

6679. Are you reading from your notes?—I am reading from my own notes; it does not appear there.

6680. What is the next?—Sir John Nasmyth, who claimed as life-owner of a *pro indiviso* half of a house and garden near Selkirk.

6681. Who had the other half?—The lady, who disponed one half to Sir John.

6682. Who was she?—Sir John claimed upon a disposition by Miss or Mrs. Veitch.

6683. Was she examined?—She was.

6684. What account did she give of this?—She gave a very confused account of it; that she had signed the deed and given it to Mr. Haldane, as her agent, and had it back again sometime afterwards to read; that she desired Mr. Haldane to do all that was necessary; she had not paid any rent to Sir John.

6685. Had she received any money?—No.

6686. She continued in the personal occupancy of the premises?—Yes.

6687. Viscount *Stormont.*] Was that vote objected to?—Most keenly.

6688. Was it held good in the Registration Court?—It was admitted.

6689. Was

6689. Was there an appeal in that case?—We wished to have examined Sir John upon that case; but he was in England, and we could not get him.

6690. What was the decision?—He was admitted by the sheriff, and we appealed; and on the 1st of October moved the case in Court, when Monday, at 12 o'clock, was given to us as a peremptory diet for examining Sir John; but he had not returned to Scotland, and we being the appellants, and having no evidence, the case was affirmed as a matter of course.

6691. *Chairman.*] Was that the whole of the evidence you gave upon that occasion?—That is the whole of my note; there were a great many other questions put to Mrs. Veitch; but that was the purport of the evidence.

6692. Did she state that there was no consideration or promise of any kind for the money?—That she had not received any money.

6693. Did she state that she had received no promise for the money?—She stated that she left the whole arrangement of the matter to Mr. Haldane.

6694. Did you discover, on the examination, what was the nature of the arrangement Mr. Haldane had made?—No, we did not; we did not examine Mr. Haldane.

6695. *Lord Advocate.*] If the arrangement was left to Mr. Haldane, was not he naturally the person to be examined to state what it was?—I was under the instructions of counsel in the course I took.

6696. Was not Mr. Haldane, who attended the Court, agent to Sir John Nasmyth, who was in England, and could not be examined?—Sir John Nasmyth would have been examined upon reference to oath, not as a witness.

6697. *Chairman.*] Had not you the means of examining Mr. Haldane in the Sheriffs' Court?—Certainly if I had been so advised.

6698. Was it not desirable to examine him upon that subject, if you wish to know the case?—I was under the guidance of counsel in that case; and I could not determine whether there was a reason for not examining Mr. Haldane.

6699. Mr. Haldane was in court, and that arrangement could have been discovered if you had chosen to examine him?—I think it might have been discovered from Mr. Haldane whether Sir John Nasmyth had granted any bill or obligation for that price; but we conceived we had proof enough that there had been no rent paid by Mrs. Veitch, who remained in the possession of the property.

6700. Did not Mr. Haldane act as agent for that lady?—He was agent for Sir John; we conceived we had sufficient from the lady, upon her evidence.

6701. Did not she leave the whole in his hands?—So she said.

6702. Was not he the person from whom the payment of the rent could have been learned?—She had not received any interest, nor paid any rent.

6703. Might not Mr. Haldane have received the rent and paid the interest?—It is perfectly possible.

6704. And he was in court?—Yes.

6705. By the advice of counsel, you did not think fit to examine him?—I do not say that I was advised by counsel not to examine him; but I was under the guidance of counsel.

6706. You acted under the guidance of counsel, and he was not examined?—He was not examined.

6707. Sir *William Rae.*] You were satisfied with the principal party saying that she had received no interest; did she say that any other person had received any?—No; we thought we had made out our objection by her evidence.

6708. Did it then fall on the other party to prove it had been paid?—That was my opinion at the time.

6709. *Chairman.*] The opinion of the sheriff was, that you had not made out your case?—Yes.

6710. Sir *William Rae.*] Have you a note of his opinion?—The note of the sheriff's decision runs in this way—"Mr. Urquhart," that is the counsel for the objector, "having admitted that the subjects were of sufficient value, examined Mrs. Veitch, designed in the claim, in the absence of the claimant, against whom he produces his citation. In respect the value is admitted, I admit the claim;" those were his words.

6711. The latter disposition was produced?—The life-rent disposition was produced, and the value admitted; the half of 26*l.*, I think.

6712. Who is the next?—John Paterson, of Peebles, who exchanged with a person of the name of Kerr, a flesher, in Selkirk.

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6713. What was the subject?—Some house property exchanged for other property in Peebles.

6714. Was there any back-tack in that case?—I have no note to show that there was a back-tack, but Kerr, in his evidence, says, "it was left to the agents to adjust all matters."

6715. What is the next case?—Thomas Forest, the younger, of Comiston; upon a *pro indiviso* share of a property belonging to his father in the county.

6716. Has his father a considerable estate in that county?—It is a sheep-farm, I do not know the value of it.

6717. Had you occasion to know that there were two qualifications making upon that land?—There was another the same year registered on another part; George Wilson, in Hawick, was registered upon an eleventh *pro indiviso* part.

6718. What was the price given for that?—The price stated in Wilson's disposition was 148*l.*, but that was settled by a disposition by Wilson in favour of Mr. Forest, junior, of property in Hawick, affording a qualification in the county of Roxburgh.

6719. Do you mean that no money passed?—I understood not.

6720. Was there any evidence of back-tacks being granted in that case?—Not in the Registration Court.

6721. It was an exchange of qualification?—Yes; my impression is, that there was a back-tack, but there was no evidence of that in the Registration Court.

6722. Mr. *Ferguson.*] Did the disposition set forth that it was for consideration?—Yes, the consideration bore to be 148*l.*

6723. Was there any proof of payment?—No.

6724. *Lord Advocate.*] Was there any question asked with respect to the payment?—There were questions asked which brought out that there was an exchange, that the payment made by Wilson to Mr. Forest was by life-rent disposition in favour of Mr. Forest's son, in Roxburgh, and he was registered.

6725. Sir *William Rae.*] How many joint life-renters were registered by Mr. Haldane that year?—There were 20, independent of those I have mentioned.

6726. Of whom did the 20 consist?—The first set was 10 upon the farm of Fairnelee, acquired in life-rent from Mr. Pringle, of Clifton.

6727. They had been rejected the preceding year?—They were rejected in 1835, after a great deal of discussion.

6728. Were they objected to in 1836?—They were.

6729. Upon what ground?—Upon the ground that when the life-rent disposition was granted, the farm was held under an agricultural lease for 167*l.* or 170*l.*; I am not sure which was the rent; that the life-rent disposition carried a right to that rent; that there being a back-tack for 100 guineas, the inference was, that it was not intended to convey a *bonâ fide* life-rent of the whole property, and that the back-tack being of the same endurance as the life-rent disposition, the life-renters were debarred from the ordinary rights of administration competent to life-renters, the objection was fully stated, and the sheriff admitted the claim.

6730. Have you a note of his opinion?—Yes; "In respect that I hold life-rent qualifications to be authorized by the statute of the 2d and 3d William 4th, cap. 65, and that the transaction appears to have been a *bonâ fide* one in terms thereof and for full value, I admit the claims;" the decision was affirmed upon appeal.

6731. The judges on the appeal took the same view of the case?—Yes; there was a difference of opinion on the bench as to the effect of the back-tack, but on no other point; one of them considered the back-tack as a colourable or suspicious circumstance, affecting the whole arrangement.

6732. What was the next case?—The next two in my list are, Andrew Anderson and the Rev. Archibald Baird, minister of the Third United Associate Congregation at Paisley.

6733. How is Mr. Anderson described?—He is described as residing at Newington, near Edinburgh; and they claimed each upon the *pro indiviso* half of a field or enclosure, part of the estate of Haining.

6734. Was it proved what part of the estate of Haining it was?—It was a grass field, very close to the house in or near the park. The life-rent disposition was produced and the intimation proved, and the value of the lands proved, and they were admitted.

6735. What were the remaining eight?—The remaining eight were, Adam Black and seven others, on the villa of Vuefield.

6736. Had those been rejected the year before?—They had been rejected in 1835.

6737. On

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6737. On what ground?—On two grounds; the principal ground of objection was, that the property was not of sufficient value. The villa was let furnished at 100 pounds or guineas; and by some arrangement with the tenant, there was a division of rent, making 84 *l.*, I think, for the property, and the balance for the furniture. The objectors led evidence, and showed that the division was not a just one, and they were rejected upon that ground. There was also an objection that the life-rent disposition in favour of the disponees had not been intimated to the tenant; but the first was the chief ground of decision.

6738. Was the first objection obviated in the succeeding year?—In 1836; the whole deeds founded on in 1835 were again produced, and amongst them the life-rent tack of the property of Vuefield, by the life-renters, to Mr. Pringle, of Clifton, for a rent of 84 *l.* still uncancelled; there was likewise produced a disposition by Mr. Pringle, of Clifton, of the life-rent of the lands on Morrison's Hill, lying near to Haining, with a new lease by the life-renters in favour of Mr. Pringle, of Clifton, of the villa of Vuefield, and the additional lands of Morrison's Hill, at the same rent of 84 *l.*; the disposition of the lands of Morrison's Hill by Mr. Pringle, in favour of the life-renters, did not bear that any consideration or price was paid for the life-rent. We founded upon those circumstances as showing there could be no *bonâ fide* ownership, particularly of the lands of Morrison's Hill; Mr. Pringle, of Clifton, being liable for the same rent before the lands of Morrison's Hill were disponed to the life-renters, as he was afterwards for the whole.

6739. That claim was sustained?—It was.

6740. What was the rent of the new additional property given in order to remove the objection of the preceding year, the want of value?—I think, about 28 *l.* or 29 *l.* was allowed to be the annual value.

6741. It appeared to have been given during the succeeding years for nothing?—To have been given during the life of the life-renters for nothing; Mr. Greive, of Howden, proved the rent.

6742. Viscount *Stormont.*] You state that they paid no additional consideration for this additional grant?—The deeds bore no consideration, and it was avowed in Court that there was no consideration paid for it; by the stamp law, every deed must contain the consideration or the cause of granting, but that did not contain either.

6743. Taking the sum of 28 *l.* as the annual rent, what ought to have been the additional principal they should have paid for it?—From 350 *l.* to 370 *l.*

6744. Sir *William Rae.*] What opinion was pronounced by the sheriff upon that case?—The sheriff said, "In respect, I hold the transaction to have been a fair and *bonâ fide* one for an onerous consideration, and for the attainment of a legitimate object, under the statute, videlicet, the acquiring by the claimants the elective franchise; therefore, in this case, I admit the claims."

6745. Was that case appealed?—Yes.

6746. State what passed upon the appeal?—The cases were very fully pleaded by the counsel, and the judges adjourned the decision for consideration for a day; Sheriff Boswell said he had looked anxiously into the cases, and that that of Dr. Walter Adam, at Hawick, goes far to establish the principle. I remember the opinion I then expressed; "I think the claimants must be admitted, though the disposition and the tack are both gratuitous; on the other hand, it is awkward that the old tack was not recalled, but the forms had been all gone through, and the Act has been complied with." Sheriff Wood, "I was ready to decide after hearing counsel on Saturday, as the principle is not new, and I see no reason for difficulty. I am quite clear the object was to create a vote last year, and the same is admitted to be the case this year; the creation is the offspring of the Reform Act, and many admitted on similar principle; it is not the question if this be defeating the Reform Act, or of carrying into effect the giving the qualification to property; is there not here the qualification required by the law?—title, possession and value are the requisites; I see no ground for saying that no property was transferred; would it be so found if Clifton became bankrupt? could not claimant's creditors adjudge? they have all the qualifications required by the statute." He referred to his notes last year, in the case of Cockburn, Fraser and Gray, &c.: "Is the case materially altered by the additional conveyance of Morrison's Hill? I see nothing against the legality of gratuitous deeds; if Clifton, from public-spirited motives or from motives of ambition, gives away

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his whole property gratuitously, I see nothing to hinder him; no additional rent for Morrison's Hill, but there is ownership and additional security." Sheriff Rutherford says, "I am now confirmed that my original opinion was right; I was always against the back-tacks; I am certain the Reform Bill does not sanction this transaction; the tack of Vuefield remains good, the disposition of Morrison's Hill is gratuitous, and the additional lease, including these lands, bears the same rent; it was said Clifton was bound in honour, but, independent of the vote, the security of Morrison's Hill not necessary; I consider this nominal and fictitious; I must still differ from my brethren, as this opens a wide door for nominality." Sheriff Wood then again says, "I said there may be cases of nominality, as appearing from the deeds." The decision was affirmed. There was a batch of eight, and that decision was held to regulate the whole of them. The counsel for the claimants left the court. My counsel said, that if Mr. Murray, the opposite counsel, had been present, he would still have argued the other cases, and have brought the matter more fully before the court.

6747. Those were cases that were admitted that year?—Yes; 22 joint life-renters.

6748. Were there any cases rejected in that year?—Yes; there were four claimants rejected in the year 1835, and again rejected in 1836; James Bell and Robert Sprott, tenants at Linton, and William Purvis and John Purvis, all tenants of Mr. Pringle, of Clifton, in Roxburghshire, as joint tenants under long leases of a property at Galashiels; an objection was there taken that the whole property did not lie in the county of Selkirk, and after a long trial in 1835, it was established that a part of the property was in the county of Roxburgh, and that there was not enough, if any, remaining in the county of Selkirk to entitle the claimants to be registered; they were admitted in the original court, and rejected in the Court of Appeal in 1835; they claimed again in 1836, and were also rejected; but the cases were not gone fully into.

6749. *Lord Advocate.*] Had you charge of those cases?—I was the objector in those cases; there was another case of Peter Bell, and five others; they claimed as tenants under long leases of *pro indiviso* parts of a mill and house at Galashiels, but the deed on which they founded showed that no price had been paid, and that the life-renters were not bound to pay any price, but merely to account for the interest, the capital being declared to be extinguished upon the death of the life-renters.

6750. Who were the grantors of that life-rent?—It was an assignation of a long lease by trustees, one of whom was a claimant under the deed himself; Elliott, Anderson and others, were the trustees.

6751. In whose favour was the grant?—In favour of Peter Bell, and five others.

6752. Who were the five?—There were two Mercers; one Mercer was one of the trustees who held the property; they were all connected; one of the life-renters was the brother, the other a clerk of the political agent at Melrose; the sheriff rejected the claims made "in respect of the terms of the assignation produced, and founded on by the claimants, and that their title shows; even had the transaction been a *bonâ fide* onerous conveyance, which, in my opinion, it was not, their interest was limited to a life-rent, in opposition to the terms of their claims; I therefore reject the claims."

6753. That was the case of persons claiming in life-rent, when the titles on which they claimed showed they had paid nothing for them?—Yes, the cases were appealed, and the judgment of the sheriff in the court below was affirmed unanimously upon the merits.

6754. You acted for the objector in that case?—I did.

6755. *Lord Advocate.*] Were there any cases of claims rejected, where you had charge for the claimants?—Yes; I gave an account of the entail cases that were rejected that year.

6756. Were there any others of which you had charge, which were rejected that year?—Yes; there was just one other claim of which I had charge, that was rejected that year.

6757. What was that case?—Adam Purdy, innkeeper, Galashiels.

6758. On what ground was he rejected?—I proved that he had a long lease from

from Mr. Scott, of Gala, on which he built his premises, but he took the lease to his wife, instead of taking it to himself, and the objection was to the title; his *jus mariti* was excluded in the lease, and he was rejected in respect of the terms of the lease.

6759. Had you any other rejected that year, of which you had charge?—I do not recollect any other that year.

6760. *Chairman.*] You have referred to the case of the brother of Mr. Pringle, of Whitebank, who was rejected; what was the nature of the property in that case?—It was a detached portion of the estate of Whitebank, which was entailed; the main object of that was to have the question tried; he claimed on a field called the Tweedside Park, with the dwelling-houses upon it, part of the estate of Whitebank.

6761. What was the decision of the sheriffs?—The cases of Pringle and of Stavert were all pleaded, and the whole cases were adjourned for consideration; the next day, the 27th of August 1836, the sheriff, having resumed the consideration of those cases, held, "In respect that the entails of the claimants' respective authors have been recorded in the register of taillies, reject the claim;" the whole of Stavert's claims and Mr. John Pringle's are included under the same judgment.

6762. How many were there of them?—Seven of Stavert's, and one by Mr. Pringle.

6763. Do you remember the case of a man of the name of Brydon, a nephew of old Brydon's, in 1835?—William Brydon was registered in 1834, and expunged in 1835.

6764. Do you remember whether his vote was objected to when he was first registered in 1834?—It was objected to in 1834.

6765. What took place upon that occasion?—"George Craig, the proprietor's factor, was examined, and proved the bargain; William Brydon, on reference to oath, swore, that he was joint tenant;—admit." Old Mr. Brydon, was present in the court also, but not examined.

6766. Was that case appealed in 1834?—It was.

6767. What took place on the appeal?—I have no note upon the case in the Appeal Court; so that probably there was no discussion.

6768. Can you state that he was admitted or rejected?—Of course if there was no discussion, the decision would be affirmed, or the objection withdrawn; I have no note, and therefore I think there was no discussion upon it.

6769. Do you know that subsequently to this, William Brydon came forward and offered to vote at the election in 1835?—I know from the poll-books that he went to the election, that the oath was tendered to him, and that he declined to take the oath.

6770. He declined to take the oath that he was joint tenant of the farm on which he was inrolled?—The oath prescribed by the statute, Schedule (F.)

6771. Was an objection raised at the following registration to his vote remaining upon the roll?—There was.

6772. Was he cited to appear upon that occasion?—I believe he was; I have a note of it.

6773. Did he appear?—He did not.

6774. Will you state what took place upon that occasion?—I entered an appeal, in order to bring the case up, to give me time to consult Mr. Brydon in the mean time; the citation was upon reference to his oath.

6775. Was the case decided on the day on which it was to come on?—No, I think it was put off till the last day.

6776. Was that done at your request?—It was; in order to give Brydon time to come up, and to enable me to know the circumstances of the case.

6777. Did he come forward?—He did not.

6778. Was the appeal entered?—Yes.

6779. Was it pursued?—No.

6780. Why was it not?—I saw Mr. William Brydon in the mean time, and found that he had difficulties about the value of the stock, because his uncle, who

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was his partner, had not settled an account with him, and I said to him, "If you have any difficulty upon the subject, do not persist in your claim;" and the appeal was withdrawn.

6781. *Lord Advocate.*] Do you know the circumstances of the case of Sir Walter Scott, who appears to have been inrolled in 1835?—Sir Walter Scott was inrolled in 1835 as a tenant under a long lease.

6782. Had he a life-rent or a long lease?—He claimed as tenant on a long lease of a piece of ground in the town of Galashiels; the title was an assignation to a long lease during the unexpired period, but declaring in the event of his death that his right should cease; therefore he was tenant.

6783. He neither had a right to a full life-rent nor to the term of the lease?—Yes, he had a right to the term of the lease, provided he lived so long.

6784. It was limited, provided he died before the expiration of the term?—Yes.

6785. He had not the conveyance of the whole term of the lease?—Yes, in case he lived so long.

6786. Is it not a limitation if a lease has 90 years to run, and you have it only during your life?—That was not the form of the lease, it was an absolute assignation of it during its whole period, but declaring that in the event of his dying before that, his heirs should not have it.

6787. Therefore he had no right to the full term of the lease?—Yes, if he lived so long.

6788. Sir *William Rae.*] Was the conveyance limited?—The conveyance of the lease was absolute, but declaring that in the event of Sir Walter's death before the expiry of the lease, it should not go to his heirs.

6789. *Chairman.*] Had he in effect more than a life-rent under that lease?—No, certainly not, for it expired with his death in the terms of the declaration.

6790. Mr. *Dunlop.*] Do you consider any conveyance of a title as a full conveyance, which does not give to the individual to whom it is conveyed the same rights which the person conveying the deed previously held?—There are two rights in every property; there is the right of life-rent, and there is the right of fee; and he may convey either the life-rent, or he may convey the life-rent and the fee.

6791. Do you consider a conveyance of property to be a good conveyance, which does not convey the whole right possessed by the party so conveying the property?—Such a conveyance would be a total denuding of the grantor.

6792. Would it be a full conveyance?—We have not such an expression in our books; it would be a total denuding; when an individual conveys a life-rent, it is only denuding during the life-time of the grantee.

6793. Therefore it is not a full denuding?—It is not a denuding of the fee.

6794. A life-rent is not a full denuding?—Certainly not a denuding of the fee; therefore not a full denuding of the whole right, of life-rent and the fee.

6795. *Lord Advocate.*] This was a conveyance, not of the property, but a lease?—It was an assignment of a lease.

6796. If he had survived the period of the lease, of course his right would have been at an end?—Of course he would have been no longer tenant.

6797. Therefore he had not a life-rent lease?—I think he had a right of tenancy.

6798. Had he a right of tenancy for the whole period of his life?—For the whole period of the lease, if he lived so long.

6799. Mr. *Dunlop.*] Had he as saleable a right in that property as if he had had a *bonâ fide* full denuding of the property to him?—Certainly not; I had nothing to do with the preparing of those deeds, they were just handed to me for the purpose of registration.

6800. *Lord Advocate.*] Was that case argued before the sheriff?—It was; I see Sheriff Wood said, "if Scott dies, he has his right; if he lives, he has the whole term; it is enough that he has one or the other, and if so, I think the claim good." Sheriff Boswell: "Lease assigned; I do not care where it goes after his death; assigned for life, but assigned for the full period, if he lives so long; I concur." Rutherford: "The objection seems to be that it does not go to heirs, but under the destination the grantor of the assignation is the heir;—admit."

6801. Had

6801. Had you any claims rejected in the year 1835?—Yes, I had.

6802. How many?—There were five claims rejected that year; I do not call to mind any others, and they were never renewed again.

6803. Were they rejected on account of the value, or what circumstances?—Not on account of the value; the value was perfectly sufficient; they were life-rent assignations to long leases.

6804. *Chairman.*] Who was the proprietor?—Mr. Craig; they were assignations to his own personal friends.

6805. Has Mr. Craig been a partisan in any way?—Indeed I should think not; he is turned off the roll just now in consequence of some objection taken to his own vote; he is not now on the roll.

6806. What is he?—A banker and writer in Galashiels.

6807. He made five life-rent conveyances?—Yes, in favour of David and William Munro, the two sons of his particular friend Dr. Munro, Archibald Gibson, Mr. John David Hope, the brother of Mrs. Scott, of Gala, for whom Mr. Craig is factor, and William Clark.

6808. Have any of those gentlemen any connexion with the county of Selkirk beyond that they acquire from this conveyance?—I believe Mr. Gibson is a magistrate in the county; I know he is a magistrate at Galashiels, on the borders of the county; Mr. Clark is now abroad; he lived in the immediate neighbourhood of Galashiels.

6809. Are any of them registered in the county?—No, certainly not under these claims.

6810. The two Messrs. Munro live in Edinburgh, do they not?—No, I believe they are both abroad with their regiments; they are both officers in the army, I believe.

6811. Sir *William Rae.*] Is Mr. Scott, of Gala, a near relation of theirs?—Yes.

6812. *Chairman.*] What was the ground on which those claims were rejected?—A mistake in their claims; they claimed as tenants for life, and the assignations in their favour were for the unexpired period of the lease, if they lived so long, in nearly the same way as Sir Walter Scott's; therefore they claimed wrong.

6813. Who had prepared the deeds in this case?—Mr. Craig himself prepared the deeds; I was living in his neighbourhood at the time, and my clerk, who was with me in the country, extended them for him.

6814. Is this Mr. Craig the gentleman from whom you received notice of the purchase of property by the Wilsons, in Galashiels?—Yes, it is the same; he does not practise as a writer generally.

6815. Who made out the dispositions that conveyed the title by which those persons acquired the property?—My clerk extended them, but I think Mr. Craig himself adjusted the drafts; my clerk put them on stamped paper for him.

6816. Who was at the expense of these conveyances?—I think the stamps were got from Mr. Craig; whether my clerk ever got any thing, I do not know.

6817. Do you know whether the parties were at the expense of them?—I do not know.

6818. Do you know what was the arrangement between them and Mr. Craig as to the acquirement of this right?—One or two of them, I know, gave their promissory notes to Mr. Craig.

6819. Do you know whether any money passed between them on that occasion?—I do not think there was any passed; the claims were all rejected.

6820. Sir *William Rae.*] In the year 1835 was there a person of the name of Robert Oliver admitted?—There was a person of the name of Robert Oliver, innkeeper in Galashiels, registered in 1835.

6821. On which side?—By Mr. Pringle, of Clifton's, party.

6822. Was there any objection taken to him?—He and his brother, William Oliver, merchant, in Edinburgh, claimed as joint tenants of certain property in Galashiels; they held a deed of assignation to a long lease on which they founded; it appeared there was a burthen of 100*l.* on Robert Oliver's share; we urged an objection that the interest of this burthen must be deducted before the value was ascertained; we did not state the objection to William Oliver, because it did not apply to his share of the property, but to Robert Oliver; the plea was overruled.

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6823. In the case of William aad Richard Robertson, was not there a sum of 498 *l.* appearing to be a burthen on the property?—It was declared a real burthen by the disposition by their mother in her favour, with a power of sale.

6824. The objection was taken and overruled?—We stated the objection, that this burthen appearing on the face of the title, the interest ought to be deducted before the value was ascertained; the interest was as near the value as possible.

6825. *Lord Advocate.*] Did those gentlemen under Mr. Craig's lease, claim again under that deed?—No, the whole deeds were cancelled, and there was no further claim ever made.

6826. *Chairman.*] Did you not state that the ground of their rejection was from a mistake in the claim?—There may have been other grounds, but that was the main ground on which the objection was taken; that they claimed to be tenants for life, while they were in fact assignees under long leases.

6827. Have any of those persons registered on any other qualification since that period?—Mr. Hope was registered in 1836, as one of the life-renters of Redford Green, I think.

6828. The whole of the deeds regarding that transaction in 1835 were cancelled, and only one of those voters has been inrolled since, and that on a different qualification?—I think that is the fact.

6829. Do you know of any other votes that have been made by Mr. Craig in the county of Selkirk?—Not one.

6830. Is he the same gentleman who received the rents for Mr. Walker, of Bowland?—Yes.

6831. Sir *William Rae.*] How many cases were there rejected on your part in the year 1835?—Those five; there may possibly have been another.

6832. On the other side there were the Fairnelee batch, amounting to how many?—Ten.

6833. The Vuefield batch, amounting to how many?—Eight.

6834. Was there a person of the name of Wilson on Blackhall's exchange?—Yes, there was; there were three of them.

6835. There were the boundary line cases?—Yes, four.

6836. Was there a person of the name of Henderson, in place of Thompson, on Clezy's house?—Yes, one.

6837. Was there the case of Gilbert Elliott, in the place of Sir Daniel Sandford?—Yes.

6838. Were there also individual cases?—Yes, 11.

6839. How many cases altogether were rejected in the year 1835, brought forward on the part of Mr. Haldane?—Thirty-eight.

6840. Your object in all the cases you have mentioned, in which you were agent, was to obtain the franchise for the different individuals for whom you claimed?—That was my object in the Registration Court.

6841. In accomplishing that object, did you uniformly see that the transaction on which it was founded was *bonâ fide* in its nature, and that a fair onerous consideration was paid for the conveyance?—Invariably paid, or undertaken for.

6842. *Chairman.*] Was a promissory note frequently taken?—In the cases I have spoken of, promissory notes were taken, but in none of the other cases.

6843. Is that a common proceeding in Scotland?—It is held to be legal payment.

6844. Is it a very common practice since the Reform Bill?—Yes; what has come before the Committee has shown it to be a very common practice.

6845. Sir *Hugh Campbell.*] Is it not a common practice to take promissory notes on small purchases?—Yes, that has been done in many cases.

6846. *Chairman.*] Was it common before the Reform Bill to take promissory notes payable at one day's sight?—No, not at one day's sight, but payable at a certain date.

6847. At what date are those notes?—Generally, I think, at one day's date.

6848. That, before the Reform Bill, was not common?—I think it was not.

Mercurii, 15° *die Martii*, 1837.

MEMBERS PRESENT.

Mr. Divett.	Viscount Stormont.
Sir William Rae.	Mr. Warburton.
Mr. Dunlop.	Mr. Ferguson.
The Lord Advocate.	Lord Stanley.
Mr. Buller.	Sir Hugh Campbell.

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

James Craufurd, Esq., was called in; and Examined.

6849. *Chairman.*] YOU are an advocate at the Scotch Bar, are you not?—I am.

6850. Have you been employed professionally in the Registration Courts of Scotland?—I have been employed in a good many of them.

6851. Have you had considerable experience in those Courts?—Yes, I have, very considerable.

6852. Were you employed immediately after the passing of the Reform Bill, and have you continued up to the present period?—I have; I was employed in 1832 in the counties of Selkirk and Linlithgow, and though not employed as counsel, I saw a great deal of registration in the county of Ayr with which I am connected, in the same year.

6853. In which counties have you been since employed?—Since that I have been employed in Peebles-shire, in one district of Roxburghshire, and in Caithness on the original registrations, and in the Appeal Court in Caithness, in Inverness-shire, Ross-shire and the county of Orkney.

6854. In the year 1832 what was the general state of the constituency you found in Selkirkshire?—I found a large body, I believe about 40 of the old freeholders, and the rest of the constituency were proprietors of small subjects, lessees of agricultural farms, tenants on long leases, particularly at Galashiels, and a few life-renters by tenure of office; that was the general character of the constituency at that period.

6855. Were those generally persons resident in the county of Selkirk?—A considerable majority of the old roll, I think, was not resident, but an immense proportion of the rest was resident.

6856. Were there any life-renters on the roll in Selkirkshire that year, except by the tenure of office?—Certainly not, exclusive of the old roll, I think there were no life-renters.

6857. Were there any joint life-renters in that year?—Most assuredly not; I am not quite certain as to the life-renters, but there was no joint life-rent whatever.

6858. Were there any joint proprietors in Selkirk that year?—No, I think not.

6859. Were there any joint tenants?—Yes, there were a few joint tenants, not many.

6860. *Lord Advocate.*] You speak from memory?—Yes; I am quite sure there was no life-renter at all, unless there may have been one of a father, life-renting property belonging to his son under family settlements.

6861. Might there have been any by marriage contract?—I include those in family settlements.

6862. *Chairman.*] You have not been counsel in Selkirk since 1832?—I have not; there was a change of agency in 1833.

6863. Have you had occasion to see much of the system under which votes have been created in Scotland since that period?—I have seen a good deal of it in Peebles-shire, in Caithness and in one district of Roxburghshire.

6864. Have you seen any change in the qualifications of the constituency since

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that period?—Yes, I have seen very great changes in the counties I have mentioned; I have seen a great many non-resident voters introduced; I have seen a great many life-renters introduced on rights of a novel description; a number of joint life-renters introduced on rights of a still more novel description; and a number of joint proprietors introduced also on rights of an unusual kind.

6865. Have you seen a number of life-rents created by a conveyance of the life-rent to an individual, and the disponer reserving the fee to himself?—I have seen a number of those deeds in those counties.

6866. Did you ever see a deed of that kind previous to 1832?—I never saw such a deed previous to 1832; I never heard of such a deed previous to 1832; I mean whereby the proprietor disponed the life-rent of the subject and reserved the fee to himself, with one exception, and that exception consists of the class of dispositions to life-rent superiorities under the old election law.

6867. Did you ever know of a case of joint life-rent previous to 1832?—Never, except the case of conjunct life-rent, as it is called, between husband and wife.

6868. Did you ever hear of any such as have been introduced of late?—Never.

6869. Have you seen many deeds of that kind since 1832?—I have seen many deeds conveying to life-renters, varying from three to 20 or 25 in each deed.

6870. Do you know that they are common?—I know they are very common in those counties.

6871. Did you know of many instances of joint proprietorships previous to 1832?—Yes; I have known many instances of joint proprietorships, but none of the kind I have seen since.

6872. What is the difference between them?—I have seen property held by partners of a company engaged in a trade, which was joint property.

6873. Did you ever know any other instance besides that?—Property held by heirs portioners, a father dividing his property among his children, in which case it is held jointly.

6874. Did you ever know an instance of joint property by purchase by individuals not connected together by trade?—Personally I do not know of an instance; I believe there have been speculations in land in which some such right was obtained.

6875. Was that a common case?—No, not at all.

6876. Did you ever, within your own knowledge, know an instance of a purchase of that kind?—Never.

6877. Have you known any such instances since?—A great many.

6878. Do you know that they are very common?—Very common indeed.

6879. Have you had occasion to inquire into many transactions for the creation of those votes of proprietorship and life-rent since the year 1832?—Yes, I have in the Registration Courts had occasion to examine both the witnesses and parties, and minutely to inquire into them.

6880. Are there any peculiarities observable in those transactions?—I have already said the rights themselves are peculiar; the peculiarities of the transactions are chiefly these; first, the inquiry usual when the parties desire to purchase property is not made whether there has been search of incumbrances, and in general no inquiry into the real value of the previous rent produced by the subject; that is one peculiarity I have observed in these transactions.

6881. Have you observed any other peculiarity in these transactions?—Another is, that, frequently, I may say generally, the deeds remain in the custody either of the agent for the grantor or of another agent for the same political party in the county.

6882. Was that a circumstance that was usual previous to the passing of the Reform Bill?—Very unusual; it is not at all usual, and not considered good practice, I believe, among writers, for the same person to retain the custody of the deed; the deed is not held as delivered unless in a different custody.

6883. The delivery of the deed was necessary, was it not, for the perfecting of a real transaction?—It was.

6884. And that delivery is, in many cases, dispensed with?—No, I do not say it is dispensed with; the deed is delivered, but after being delivered to the purchaser or the party acting for him, it remains in the custody of a person not previously his agent, but his agent only for that transaction.

6885. Is

6885. Is it common for the same writer to act for the disponer and disponee?—In real transactions, without reference to the creation of votes, very uncommon; in many of the cases I have seen of the creation of votes, very common.

6886. Is it common for a person to be appointed agent in such transactions who was not the agent of the individual in other transactions?—Very common.

6887. Do you conceive that acting for the disponer for whom he was previously employed, and for the disponee for whom he was not previously employed, his holding of the deed is an evasion of the delivery?—No; I think that is one of the peculiarities in this species of transaction; I mention the circumstances which have struck me as peculiar in these transactions, and that I consider as one of them.

6888. Does the deed never go back into the hands of the disponer's agent?—In most of the cases I have seen, the deed is put into the hands of the disponer's agent in this way; it is first given to the party himself; it is out of the hands of the disponer for five minutes, or it is handed to the person acting for the disponee in that transaction, who is very frequently another agent for the same political party, whatever that party is in the county.

6889. Sir *William Rae.*] Are they sometimes given back for the object of the registration?—The registration in the county may probably be, and I believe is, one object of delivering them back. Another peculiarity I would mention, is that enfeoffment is not common; the parties are not generally enfeoffed.

6890. *Chairman.*] Was enfeoffment common previously in usual transactions?—It is absolutely essential to the ultimate security of the right.

6891. *Lord Advocate.*] Where persons have confidence in the seller, enfeoffment is not taken sometimes?—That is the case sometimes.

6892. *Chairman.*] You state that these qualifications are of a very unusual nature?—I think the rights are very unusual, and were almost unknown before the passing of the Act.

6893. Did you consider them as coming under the intentions of the Reform Act?—I have some doubt whether they come under the words of the Act, as those words ought to be interpreted; but I do not pretend to say they do not come within the words of the Act, because the sheriffs have ruled that they do come under the words of the Act. I think they are opposed to the intentions of the Act.

6894. Why do you consider that they are opposed to the intentions of the Act?—First, because the rights being unusual, and almost unknown prior to the passing of that Act, cannot be presumed to have been contemplated by the Legislature in passing that Act; secondly, because the peculiarities in the transactions which I have already mentioned, lead me to believe that those are transactions not with reference to real business, but merely for the acquisition of a vote; and, thirdly, because the parties so acquiring votes are non-resident.

6895. With respect to the first, that the qualifications now acquired were of a nature at that time quite unusual and unknown, you think on that account they could not be in the contemplation of the Reform Act?—I think not; I think the intention of the Legislature must have been to attach a qualification to property acquired in the course of real transactions, and those rights being unknown in the course of real transactions, I do not think it could have been the intention of the Legislature to attach a qualification to the possession of such rights.

6896. You state that a great change has taken place in the manner in which property is now held in Scotland?—Yes, I think those rights are a great change in the practice.

6897. Are you of opinion that there is any thing in the Reform Act which contemplated making a change in the nature of that species of property in Scotland?—I think not.

6898. Sir *William Rae.*] Was it nothing particular to dispense with enfeoffment?—Yes, the Reform Act certainly did dispense with enfeoffment.

6899. Is not that unusual as connected with Scotch proceedings?—It was unusual, but it was not the creation of a new right; I understood the question to be, whether there was any thing in the Reform Act that led me to suppose any alteration was intended in the nature of the rights in Scotland; I was incorrect if it was intended the other way; the dispensing with enfeoffment was certainly unusual.

6900. The legislature having specified that a life-rent should qualify an individual, do you not think they must have contemplated persons purchasing life-rents to attain that qualification?—I do not think so; I think the legislature must have contemplated

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contemplated life-rent qualifications, but I think they contemplated such life-rent qualifications as were consistent with the real transactions, in which the life-rents had been previously found to exist.

6901. There are no words to that effect in the statute?—Not at all; I merely state my inference from the Act.

6902. If it should appear that in the course of the Reform Bill going through Parliament those objections were stated as likely to occur, and yet the Bill passed after that was stated, would your conclusion remain the same as to the opinion of Parliament?—My conclusion then would be, that those parties to whom such objections were stated, acted without sufficient foresight in passing the measure; but I still should think that the legislature did not contemplate these new rights.

6903. Your second reason would go the length of supposing, that the legislature did not contemplate the purchase of property for the mere object of voting at all?—I rather think that is the fair inference.

6904. Is there any thing in the Act which leads you to suppose there was any intention in the legislature to limit the constituency of the county?—There is nothing in the Act which leads me to suppose that; but I think the purchase of property only for the sake of a vote, is not consistent with the principles on which representation by property qualification depends.

6905. On what ground do you suppose that the legislature having specified a certain quantity of property should entitle a person to vote, could mean that a man should not acquire that property for the sake of having a franchise?—I think that a property qualification is taken as the best practical test of the voter's fitness for the franchise, as creating a presumption in favour of the intelligence and independence of the voter, and that that would cease to be the excellent test which it is conceived to be, if the acquisition of the test, otherwise than through the ordinary real transactions of life, and with reference to the ordinary business of life, were encouraged.

6906. Mr. *Dunlop.*] Do your answers apply to *boná fide* transactions where the property is really purchased out and out for the sake of the vote, or only to fictitious purchases?—I think if a person buys a property and it has a vote attached to it, there is nothing to prevent a man purchasing the property and using the vote; my answer referred to purchases by persons who purchased solely for the purpose of acquiring a vote, and unconnected with the county.

6907. Sir *William Rae.*] Of course a vote is attached to every property of the value of 10*l.*?—Every party possessing property to the value of 10*l.* is entitled to vote; the property is not represented; the man is represented, and the property is a test of his qualification.

6908. Do you mean to make a distinction between properties to the value of 10*l.* and larger properties on which you say that purchasers of such property would be entitled to vote?—No, I do not mean to make any distinction between properties of 10*l.* and properties of a larger value.

6909. *Lord Advocate.*] Is it not more probable that fictitious qualifications of small amount would be obtained for the purpose of voting, than those of a larger value?—There is much greater facility in creating fictitious votes at 10*l.* a year than at 100*l.* a year, of course.

6910. *Chairman.*] You stated that, amongst other objections to the kind of votes now introduced, a great number of them are non-resident?—A great many of them were non-resident.

6911. Do you consider that as strong an objection as the other peculiarities you have mentioned?—I think the objection of non-residence is extremely strong, both in principle and in reference to the consequeuces which will result from it.

6912. Will you explain the grounds of your opinion upon these heads?—I have already said that I think property is not represented, but is the test of the voters' fitness for the franchise purchased; the test ought not to be, particularly when purchased by persons not connected with the county, having nothing to do with its concerns, and intruding themselves on the original constituency.

6913. Do you found this opinion upon the divisions of counties leading you to think that the representation was intended to be local?—I think it was of no use whatever dividing the whole constituency of Scotland into counties, excepting with a view to the creation of local constituencies.

6914. You referred to the consequences?—I think the consequences are likely to be very unfortunate; the local constituency naturally feels aggrieved by the intrusion

intrusion of non-resident voters; they never see those people except when they come to vote; they are aware that they have no interest in the county, except the trifling interest which they have purchased or obtained for a vote; and it is extremely probable that the excited feelings of constituencies, on the intrusion of non-resident voters, may lead to bad consequences; it may either disgust them with the franchise altogether, or it may excite their anger towards the non-resident voters.

6915. Are the constituencies in Scotland generally small?—They are generally very small, and it is remarkable that in the counties where those non-resident voters generally abound the numbers are particularly small.

6916. They are so small they can be easily overwhelmed by non-residents?—Very easily indeed.

6917. Sir *William Rae.*] Are there not special circumstances connected with those counties to which you allude, which have led to a number of that description of voters being introduced?—I am not aware of any special circumstances which have led to it.

6918. Have not those counties been contested counties?—Yes; I have no doubt that was the reason for the introduction of a number of non-resident votes.

6919. *Lord Advocate.*] It is chiefly in contested counties it is done?—Yes it is chiefly in the contested counties, and chiefly in small constituencies.

6920. *Chairman.*] Is it your opinion that it was not contemplated that the resident constituency should be interfered with by persons coming in from other districts?—I think it was not; that it was intended that county elections should be decided by the local constituency in each separate county.

6921. You state that you think the consequences would be unfortunate from the irritation and disappointment occasioned by constituencies being thus overwhelmed?—I think so.

6922. In what spirit have the elections been carried on since the Reform Bill?—I have heard resident electors and the poorer classes very frequently complain loudly of the intrusion of non-resident voters; I have heard them say that it made their franchise a mockery; that the alternative must be either to clamour for such an extension of it as would exclude the influence of non-resident voters, or to give up their franchise.

6923. Sir *William Rae.*] Persons on any roll generally wish to confine it as much as possible, do they not?—No, I think not; I think the wish of those people to whom I have alluded is, that the franchise should be extended as much as possible within the local constituency, but not extended beyond it.

6924. Is it not a natural wish of people to make their own right as valuable as possible?—Yes, it is a natural wish of people to make their own right as valuable as possible, no doubt.

6925. May not that account for their wish to exclude others from the roll?—I confess I do not think so; I have observed no unwillingness on the part of those people to see the franchise committed to all who have a fair qualification within the county on all occasions, and no attempt to keep people off the roll who are fairly entitled to it within the county.

6926. With respect to the present Act, in burgh representation residence is necessary, but it is not in counties?—It is not.

6927. Then there is an obvious distinction recognised by the Act between those two bodies?—There certainly is a distinction recognised by the Act.

6928. What is the principle as applicable to the county part?—There is an express division of the constituencies into local county constituencies; and I think the plain meaning of that is, that those local constituencies should return each their local Member, which they never can do if non-residents are admitted.

6929. Does not it appear to you to be the rule, that property should be represented?—No; I think it is not the principle of any representative government that property should be represented: I think that the man is represented, and property is the best practical test of his qualification.

6930. Do you think that where a man has large property, subject to considerable taxation, he should have but one vote?—I think that is quite enough. I think that was the intention of the statute and of all representative systems; if a man has 20,000*l.* a year in one county, he has only one vote, and undoubtedly it could not be contemplated by the Legislature, that if he had 30*l.* a year in three counties he should have three votes.

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6931. *Chairman.*] If the property was to be represented, there should be a vote for every 10*l.* of the property, should there not?—Certainly there should.

6932. It is only where that property is divided amongst individuals that it gives different votes?—Yes; if the person was a proprietor of the whole of one county, he could have only one vote within that county.

6933. *Lord Advocate.*] Is that opinion peculiar to yourself, or does it proceed on any authority?—I think the principle of representing, using the property as a test of his fitness, is recognised by all the constitutional writers I have ever read; distinctly recognised by Blackstone, and, I think, by all the constitutional writers I have ever read.

6934. In what passage of Blackstone?—It is in the first volume of Blackstone; the words are, "that if every man in the county could give an intelligent and independent vote, he is entitled to give it: as that cannot be expected, some test is necessary, and the possession of property is the most practical and best test;" that I conceive to be the test of representation.

6935. *Chairman.*] Is that generally the doctrine laid down by Blackstone, or are those his precise words?—I am not sure of the words, but those are nearly his words; it is the substance.

6936. Sir *William Rae.*] Do you think 10*l.* a proper criterion for that degree of intelligence?—I think, in the present state of the intelligence of the country, 10*l.* is a good criterion; it forms a criterion rising or falling with the increasing or decreasing intelligence of the country. I can look forward to the time when 2*l.* would be too much, and I can look back to the time when 50*l.* was too low.

6937. You belong to the liberal party?—I do.

6938. *Chairman.*] Do you consider those votes, which you have stated are acquired by peculiar modes, to be of a colourable nature?—I have seen some of the votes, which I ascertained to be colourable and fictitious, and I have no doubt there are a great many more which are so, and where it is impossible to ascertain it.

6939. Do you think fictitious votes may be very easily and extensively created in those modes?—I think that, by the creation of life-rent rights and joint life-rent rights, and joint rights of proprietorship, it is perfectly easy extensively to create fictitious votes, and yet so as to give them the appearance of real transactions, that it would be almost impossible to ascertain their true character.

6940. Why cannot their real character be ascertained at the Registration Courts?—There are many difficulties in the investigation in the Registration Courts; and one is, that if the deeds exhibited, being probative writs, are fairly and regularly executed, it is difficult to contradict those deeds.

6941. *Lord Advocate.*] You mean *ex facie* fairly?—Yes, appearing to be properly executed, if the deeds are, as Lord Thurlow said, clear, the question is, are they sincere, and that is a difficult question; there are many difficulties in the investigation in the Registration Court.

6942. Are the difficulties such as you find it impossible to overcome?—In some cases they may be overcome, because a reference to the oath of the party claiming has been found competent; and if that party is a very candid man, or a very unsuspecting man and simple, the truth is discovered, but if there is a complete confidence between the creator of the life-rent and the receiver of it, it is almost impossible to ascertain the nature of the transaction in the Registration Court.

6943. If an oath is administered to a claimant in the Registration Court, do you not, by administering the oath, preclude yourself from taking any further evidence upon the subject?—Yes; a reference to the oath of the opposite party is, by the law of Scotland, only competent when all other evidence is abandoned.

6944. You peril your own case on what you can oblige him to admit?—Yes.

6945. Sir *William Rae.*] May you not put questions to the party without reference to oath?—A judicial examination is clearly recognised in the law, but in the Registration Court most of the sheriffs have declined to admit the examination of the party claiming, except by reference to his oath.

6946. Do you think that is rightly decided?—I am inclined to think it is, but I know there is great difference of opinion upon that subject.

6947. Do you think there is any thing in the Act to exclude that examination?—There is nothing either to exclude or admit it expressly; the words, I think, are "all competent evidence."

6948. Are you aware that, under the old system, the examination of the parties was a means of ascertaining the reality of the vote?—It was.

6949. Will

6949. Will not the same results arise if the law does permit a full examination of the individual, not upon oath, and may it not prevent the necessity for the production of other evidence?—I think the analogy of the old law of election decidedly in favour of the receiving such examination, but the sheriffs have generally decided the contrary; I have myself proposed to examine the parties, and been refused permission by the sheriffs.

6950. Did the refusal depend upon the nature of your examination?—The objection taken by the opposite party was, "You cannot examine my client unless you refer the case to his oath."

6951. *Lord Advocate.*] In the old law they were examined on interrogatories, and not on such questions as you would propose to put?—I believe that was the case.

6952. Sir *William Rae.*] Is not an examination *vivâ voce*, much more effectual than upon interrogatories?—Much more so.

6953. *Lord Advocate.*] Are you aware of any examination under the old law *vivâ voce?*—No.

6954. Are you aware whether the examinations on interrogatories were found effectual?—I believe they were not found effectual.

6955. Mr. *E. Buller.*] With regard to the present practice in Scotland, when a claimant is put under examination on reference to oath, is he not subjected to a full examination?—He is; but if confidence exists between the parties, no examination can fully get out the truth of the transaction.

6956. You suppose that the claimant, if he has only confidence in the person who has given him his right to vote, may perjure himself?—No, I do not say that, but that he will disguise the matter.

6957. Do you not consider, when a witness is on oath, that if he disguises so as to prevent your arriving at the truth, that is perjury?—I consider it a very bad equivocation; I do not mean to say that I ever saw a partisan perjure himself in that way; I am not entitled to say that.

6958. The question is, as to the extent to which examination on oath is at present allowed in the Registration Court, and how far that is or not effectual in eliciting the truth?—Examination on oath is permitted to the extent of putting any question to a party which the sheriff presiding thinks a fair question, and I have myself examined a claimant for two hours.

6959. Then the sheriff is the judge of what questions ought or ought not to be put?—Yes.

6960. In your experience, has the sheriff frequently interfered to prevent questions being put which in your opinion were necessary for the purpose of eliciting the truth?—I never saw him interfere to prevent a fair question being put. There are different opinions as to the relevancy of certain questions, but the sheriffs have always behaved with the greatest fairness and impartiality.

6961. You have found no difficulty in putting any question necessary to try the fairness of the transaction?—No difficulty in putting the question.

6962. Then the witness must either answer that question or he must perjure himself?—I do not wish to say that any witness perjures himself, but I have seen witnesses, and I think I have with me the evidence of witnesses given on oath, in which the case has been so stated, that no one could fail to have the strongest suspicion that it was not a *bonâ fide* transaction; but the witness does not say so.

6963. No doubt you will occasionally meet with a prevaricating witness in a Registration Court as in other courts, but will not the answer generally be according to the truth of the facts?—Certainly.

6964. What impediment is there then to your ascertaining in the Sheriff's Court by the oath of the party, the real nature of one of these transactions; for instance, whether the deed, which you say is clear, is or is not sincere?—I cannot answer the question otherwise than by putting a case: I will put the case of a party who obtains a disposition to a property, and who gives a bill for the price, and no change of possession takes place; the tenant previously in possession continues so; now, if there is a perfect confidence between the grantor and the receiver of that bill, whether payment of it will ever be demanded or not, is a very difficult point to be ascertained. I ask the claimant, "Are you bound to pay that bill?" he says "Clearly;" "Do you expect to pay it?" he says, "I am bound to pay it, and I know I can be compelled to pay; I have made no arrangement or no understanding;" and there the case remains.

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6965. Supposing that to be the case, if the party has really given his bill, and there is no understanding between him and the disponer that the bill is not to be paid, would you not consider that a *bonâ fide* transaction?—I cannot say so; I think that when rights are given to parties whose partisan feelings on either side are perfectly well known, the understanding always is that the bills are not to be paid, and very few of those bills have been paid in point of fact, I mean so far as I have inquired into the transactions; in the Registration Court I have found very few that could say they had been paid, and I have found many that have been obliged to acknowledge they have not been paid.

6966. *Lord Advocate.*] Under the old election system do you know that bills were given and remained for a great course of years?—Yes.

6967. Though there were questions that could be put there?—Yes; and though the parties did take the oath and submit to the usual interrogatories; I believe there were cases in which, after all, the bill remained in the hands of the receiver, and payment was never asked.

6968. In such cases there is usually nothing said on either side with regard to paying the bills?—No.

6969. And no express understanding?—No understanding or arrangement.

6970. Sir *William Rae.*] Does it not commonly occur in real purchases that bills are given for the price?—I have no doubt that bills are given for the price.

6971. It must depend on the circumstances of the case how the fact is?—The parties who give those bills in these transactions are not parties who give bills in other transactions.

6972. *Chairman.*] Do you know that parties give those bills who have not the money to pay them?—I know that parties have given bills who have acknowledged in the Registration Court that they have not provided the funds to pay them.

6973. *Lord Advocate.*] Was that considered an objection to the transaction?—No, not when they said that they were bound to pay the bill when demanded.

6974. Viscount *Stormont.*] Is this a case of life-rent?—I have seen bills given since the year 1834 in payment of the price for life-rent rights, joint life-rent rights, rights of joint proprietorship, and rights of several proprietorships by parties not previously in the habit of giving bills in real transactions.

6975. And where they had not the money to pay those bills?—I cannot say that of any considerable number, for I have not the means of ascertaining that; but the parties have acknowledged in many cases in the Registration Court that they had not provided the funds to pay the bills.

6976. *Chairman.*] Were they in a situation, so far as you could judge, to pay the bills?—The cases to which I allude were in the county of Caithness; I think, from what I saw of the parties, masons, tailors and shepherds, that they were not in a situation to pay the bills, but I can speak only from their apparent situation.

6977. Viscount *Stormont.*] Are you not aware that it is a common practice in Scotland to build a house upon the security of the house, by borrowing the money?—I have no doubt it is.

6978. And that that existed previous to the passing of the Reform Bill?—To purchase a house in that way did exist before the passing of the Reform Bill; persons frequently purchased a house, and allowed the whole or a part of the price to remain a burthen upon it.

6979. Is it not a very common occurrence in small villages in Scotland where houses have been taken on feu?—I really do not know; it is a common occurrence in Edinburgh, and I have no doubt it is so elsewhere.

6980. *Chairman.*] Will you explain what you mean as to the want of facilities for discovering those circumstances in the Registration Court; you stated that you did not think that persons perjured themselves in those courts; do you think it is a common circumstance for individuals to come forward who hold fictitious votes representing them as real ones?—I have no doubt that that has been done, that persons hold votes for which they have paid no price whatever, because they have given a bill which they never expect to be asked to pay; they make out their case and are put upon the roll.

6981. You think it is common, where a transaction is merely a nominal one, for parties in the Registration Court to make it appear a real one?—Yes, where there was no price paid or expected to be paid.

6982. You stated that where there was a full confidence between the disponer and the disponee, it was impossible to detect whether it was a real transaction or not?—I think so.

6983. Do you not conceive that is a system which leads to great deception?—I think, in a moral point of view, it is extremely objectionable, accustoming the people to look with much less reverence than they ought to do upon the sanctity of an oath.

6984. Mr. *Ferguson.*] Have the obligations formed a legal burthen upon the property?—Certainly.

6985. Then the bill is binding against them and against the property?—Yes; he knows he may be called upon to pay it whenever the party pleases.

6986. Therefore the obligation is a perfectly legal one?—Yes, the bill is always clear; the question still is whether the bill is sincere.

6987. *Chairman.*] Do not you think a temptation is held out to poor persons in those situations to perjure themselves in the Registration Courts?—I think a temptation is held out to them to look irreverently upon the obligations of an oath, and to venture on disguises which they otherwise would not do.

6988. Do you think the system is one which tends to make persons, in cases where they are afraid the truth should be discovered, perjure themselves?—I think there is that danger.

6989. Have you known instances of claimants, whose votes have been rejected after they have taken the oath that it was a real transaction?—Yes, I know certainly one instance of that, but I do not in the least accuse the party of perjury; on the contrary, I think he was clearly an honest witness; it was the case of a man of the name of Robert John Gunn, a voter, in Caithness; there were three others with him, who were admitted on the roll. First of all, the deeds were all apparently correct and regular; then the party swore that he granted a bill, and that he was bound to pay it; he also swore that there was no understanding whatever as to the non-payment, and no understanding whatever as to the way in which he should give his vote in return for the right; but, upon a minute examination, he admitted that he considered himself, in honour, with reference to the whole matter, so bound, that he would use the grantor ill if he voted against him or his candidate, and that he could not say that he expected ever to be able to pay the bill; and that man was rejected.

6990. What were the grounds of his rejection?—That his right was nominal and fictitious; that he was bound; and his vote was not free, in the first place; and, in the next place, that the right was colourable, because he never expected to pay any price for it.

6991. Sir *William Rae.*] That was a perfectly honest oath in your opinion?—I think it was perfectly honest and fair.

6992. Is not that rather a case in favour of the reference to oath than against it?—Yes, it is; it shows that it is sometimes possible to arrive at the truth; that man was a perfectly fair witness.

6993. Mr. *Dunlop.*] Does not it also show that it requires great honesty and consistency in the claimant to arrive at the truth?—Yes; I know the man was abused for the oath he gave afterwards, and told he was a fool; that he should have stated it differently.

6994. Mr. *Ferguson.*] Are persons so examined ignorant of the legal punishment for perjury?—I cannot say so; nobody can be presumed to be ignorant of that.

6995. Is it not the duty of the legal officer presiding in the Registration Court to call the attention of persons put on their oath to the high penalties they expose themselves to by a false oath?—I have no doubt they are aware of the penalties of perjury.

6996. It is not a trifling act on the part of a man to take a false oath?—Certainly not.

6997. Mr. *Dunlop.*] Could you prosecute a man for perjury where he had a legal right, though that right should not be *bonâ fide*?—I am not exactly prepared to answer that question, whether that could be done or not.

6998. Mr. *Buller.*] You said there were three other persons joined in the same deed with Mr. Gunn; were those parties admitted to the roll?—Those parties who were admitted to the roll did not stand in precisely the same situation.

6999. Were they all subjected to the same examination?—Only one was subjected to the same examination.

7000. Sir *William Rae.*] Why were not the others?—Because one of the others was the agent for the party, and it was not thought advisable to put him to his oath;

oath; the other was a relation of the grantor, and I believe gave no price; I think it was for love and favour.

7001. Mr. *Buller.*] He took his interest for love and affection?—I think that was the case; I am certain he was not put upon his oath; and I rather think the reason he was not put upon his oath was, that being a relation it was granted for love and affection.

7002. Was the person that was put upon his oath subjected to the same examination as Gunn?—Yes; he had granted no bill; he was a farm servant of the grantor, but had a running account, and swore that in the running account he had credited his master with the price.

7003. Then, though four parties were joined in the same deed, the circumstances of the grant to each were not precisely the same?—Certainly they were not.

7004. Then you would not infer that because Gunn's was a fictitious vote, the others were fictitious also?—No, by no means; that would not necessarily follow.

7005. *Chairman.*] Who was the grantor of those life-rents?—Mr. William Horne.

7006. Is there any thing in the case of non-resident voters that makes it more difficult to get at the truth of their cases than others?—The first circumstance is, that being non-resident they cannot be so easily brought into court at the registration as the resident voters, because the sheriffs in many parts of Scotland, all the sheriffs in the Northern District of Scotland particularly, have decided that if a claimant is resident without the county he cannot be brought into court by mere service of the statutory objection to him, but must be personally cited, which is attended with a considerable expense.

7007. Are there any other difficulties which apply to non-resident voters?—Another difficulty is, that less is of course known of their situation and circumstances by the objectors.

7008. From your experience, are the greatest number of those transactions which you describe as of a peculiar character, to be found among the resident or the non-resident claimants?—In every county with which I have any connexion with regard to those matters, except Caithness, the non-resident voters upon this system very greatly exceed the residents.

7009. Are there any other difficulties peculiar to non-residents in discovering whether their votes are real?—No, I am not aware of any other.

7010. You stated that you acted in Roxburghshire?—At the last registration at Hawick.

7011. Who was the counsel opposed to you at that time?—Mr. Charles Baillie was the opposite counsel, and a Mr. Oliver was the local agent, I think; and Messrs. Horne and Rose were the political agents.

7012. Did you find that those sorts of cases occurred there which you have stated as having occurred since 1832?—I found, by both parties, the introduction of life-renters, joint life-renters, and joint proprietors, on the system to which I have alluded; and a great proportion of all those claims were tendered for parties non-resident.

7013. Were those cases minutely investigated in the Registration Court?—They were not minutely investigated, for there had been so many previously on both sides that Mr. Baillie and I could not see any distinction between those cases; there was just a slight examination. An accurate examination of deeds was made, and if there had been a legal objection, it would have been detected; but we both agreed it was impossible to make distinctions between those and previous cases.

7014. You had no means of ascertaining whether they were real or nominal transactions?—No; we might have referred the matter to their oath, but we were reluctant to that on both sides.

7015. Can you state, from your experience, whether the system is much on the increase?—It is greatly on the increase in several counties which I know; the number of rights of that kind has been increasing for the last few years. I do not think it has been increasing in the county of Roxburgh for the last two years; but it has greatly increased in Selkirkshire and Peebles-shire. In Caithness there never was any life-rent right of the kind at all until last year.

7016. Were you in Caithness the last registration?—The last two years.

7017. Were they numerous upon the occasion of the last registration?—I think there were 21 or 22 life-rent rights offered upon that occasion of 1836; there had been none created before.

7018. Were those created by many individuals, or by one individual?—By several individuals. I think there were four individuals, altogether, who created them.

7019. Who were they?—Mr. Donald Horne and his brother, Mr. William Horne; they have both extensive properties in the county; a few by Sir George Sinclair himself; one, I think, by Sir Ralph Anstruther, and two or three by a person of the name of Smith, of Thurso, a relation of Mr. Horne's.

7020. Had you occasion to know the constituency of Caithness in 1832?—I was not counsel in the year 1832, and had only information of the new constituency from having inquired into it to prepare myself for an argument upon those life-rent votes; I have minutely investigated the register and ascertained it.

7021. At that time there were no life-renters?—There were a few life-renters inrolled as life-renters, but they were all clergymen or schoolmasters in right of office.

7022. There were no joint life-renters at that time?—None.

7023. Were there any joint proprietors at that time?—I think there were one or two joint proprietors, but they were partners in business.

7024. Sir *William Rae.*] What is the extent of the roll?—The extent now is 294, including the old roll.

7025. *Chairman.*] Mr. Horne is the gentleman who acted as agent in Selkirkshire?—Yes.

7026. Did he act as an agent in Caithness?—Yes, and his partner, Mr. Rose, attended the registration.

7027. Who is Mr. William Horne?—He is sheriff of Haddingtonshire, and has large property in Caithness.

7028. In the case of life-rents created, have you any means of knowing whether they are real or nominal transactions?—I have no means further than I have already mentioned, that they were unusual rights acquired by unusual transactions; bills granted by parties not in the habit of giving bills, and not in a situation which led me to suppose it possible they could pay them.

7029. Sir *William Rae.*] Did you attend the Registration Court in 1835 and 1836?—Yes, I did, and at the Appeal Court.

7030. *Chairman.*] Who had prepared the deeds in those cases?—Most of them by Messrs. Horne and Rose. I believe some few were prepared in the county by Mr. Sheill, who acted as political agent under Messrs. Horne and Rose.

7031. Was it proved that any cash had been paid by the parties?—The only two instances in which I ascertained a payment of cash were two cases of farm stewards, who, having an account with their masters, swore that they had credited their masters in their current account; in all the other transactions which were inquired into, bills were given for the price.

7032. Viscount *Stormont.*] How many cases were investigated?—The great proportion of the life-rent cases were investigated. Of the 22 cases there were probably about 15 investigated.

7033. *Chairman.*] How many were put on by those four individuals?—Mr. Donald Horne put on upon his own estate six life-renters, and created three more life-rent rights, which were rejected on a legal objection. That was on his own property; then he purchased property to make some, and created either seven or eight more. Mr. William Horne created four, and Robert John Gunn, who was rejected, making five. Sir George Sinclair created, I think, five; three to his brothers, and I think two, but I am not quite certain whether there were two or three others. Mr. Smith, I think, two; and Sir Ralph Anstruther one, but he was rejected on a legal objection.

7034. Viscount *Stormont.*] Were those three Sir George Sinclair created for his brothers given for love and affection?—Yes, that was stated; and when we see the deeds bear for "love and favour," it is always considered courteous not to inquire into transactions between brothers where that is set forth.

7035. *Chairman.*] You stated that there were only two cases where any consideration was pretended to be given in cash?—There were only two cases in which any consideration was ascertained to be given; those were Mr. Walter Grieve, Mr. Donald Horne's farm-steward, and also engaged in sheep speculations with Mr. Horne, a man of substance, and able to pay; and another, a man of the name of William Darling, Mr. William Horne's farm-steward. In both those cases, they stated that they had credited ther masters in their accounts.

7036. Lord *Stanley.*] Are the Committee to understand that it was proved that no money had been paid in the other cases?—Bills were given.

7037. *Chairman.*] Were they bills at one day's sight?—Most of the bills were at longer dates, I think.

7038. Are the bills given for those purchases usually at one day's sight, or at a longer date?—I think, in the south of Scotland they are generally at one day's sight; in Caithness, I think generally at 12 months' date, and of course they have not become due at the time of the investigation; we could only ask what was expected regarding them.

7039. Lord *Stanley.*] Do you think that it is a common practice to admit voters upon the roll, who had acquired their right by virtue of a bill which bears upon the face of it, that it was not due at the period at which they were put upon the roll?—I think that in Caithness a great proportion of the bills given, were at 12 months' date, and did not become due till January 1837, the investigation taking place in September 1836.

7040. Were those cases of parties of whom you have asked the question as to their payment of the bill when it became due?—Several.

7041. What was the answer they gave?—That they knew they were bound to pay them, but that they had not provided the funds.

7042. You stated that one of those persons was rejected on the ground that his vote was not considered a free one?—That was the case of Mr. Gunn.

7043. What is the power the holder of a bill of this kind has over the voter which should make it not a free vote?—After it becomes due, he may protest the bill, and imprison the party for non-payment.

7044. Is he supposed to have a power over the vote of the person who gives him the bill?—In that case of Gunn's, the sheriff rejected it, because the claimant admitted on oath, that in consequence of the transaction between him and Mr. Horne, he would ill use Mr. Horne if he did not support him or his candidate.

7045. In cases where a bill is given for the amount of the debt, may the holder of the bill call up payment at any moment he pleases?—Yes, he may demand payment, and enforce payment by imprisonment.

7046. In how short a time?—In six days.

7047. Taking the case of a person voting at the election in opposition to the interests of the individual who holds his bill, has he the power of imprisoning him, if he does not make payment in six days?—Yes.

7048. Mr. *Divett.*] What effect will a legal proceeding against that individual have on the possession of the life-rent?—If the individual pays it, of course it is all right.

7049. Assuming that he does not pay, what operation has that upon the life-rent?—By the law of Scotland, if a creditor fail in recovering from the person, he may attach the property of his debtor.

7050. There is no difficulty in his doing that?—No.

7051. *Lord Advocate.*] That would be an operation of some time?—Yes, much longer than that against the party.

7052. Sir *William Rae.*] In the meantime the right remains in the party; he may vote upon it?—Certainly.

7053. Mr. *Divett.*] But during the time those legal proceedings to attach the life-rent are in progress, the individual who has granted the bill may be remaining in prison?—Yes.

7054. *Chairman.*] He may attach both person and property at the same time, may he not?—Yes, by different processes, the one at a longer interval than the other.

7055. Sir *Willam Rae.*] The process to attach the property is a long process?—It is a tedious process.

7056. Lord *Stanley.*] Suppose a man holds a life-rent, which he has paid for by bill, and he is proceeded against upon that bill, not having money to satisfy the bill, may he sell it to another party, who may give him enough to discharge the bill?—Yes, he may sell the life-rent or borrow money upon it; he would extinguish his own life-rent qualification, but the other party can acquire none.

7057. If he was to sell it to another party, would he acquire the right of voting?—No, he cannot confer a right of voting on another by transferring the life-rent.

7058. Mr. *Warburton.*] He could not release himself from the responsibility incurred by the bill he had accepted?—Certainly not, unless he paid it.

7059. Mr.

7059. Mr. *Divett.*] In selling the life-rent to another person, he would not be able to acquire for it as much money as he had given for it by his bill?—I really cannot say that; I think, in some cases, he might be able.

7060. Mr. *Dunlop.*] He would, at all events, sell a property of much less value than when he held it himself with the vote attached to it?—Certainly, because it would be under a deduction of the right of voting.

7061. *Chairman.*] Have you ever known a life-rent purchased in Scotland where the fee was reserved by the original grantor, except for the purpose of voting?—I never saw such an instance, nor heard of such an instance as a disposition of life-rent, the grantor reserving the fee, except for the creation of a vote, and I have had conversation with many extensive conveyancers. I was four years in a conveyancer's office myself, and I have conversed with many, but never met with a conveyancer who had seen such a deed.

7062. Sir *William Rae.*] Had they ever seen such a conveyance of the old freehold qualification?—Yes; I except that; that was for the purpose of the vote also.

7063. It bears to be a conveyance of the land?—Certainly.

7064. *Chairman.*] In the case of the life-rents in Caithness, who had the custody of the deeds?—The agent under Mr. Horne in the county, Mr. Sheill.

7065. The political agent of the candidate?—Yes.

7066. Take the case of a person who wished to sell his property, or borrow money upon it; could he do it while his title was in another person's hands?—If he paid the bill he was entitled to enforce delivery of the titles; and if he could procure the money to pay the bill, of course he had it in his power immediately to get the titles and dispose of his life-rent, but he would lose his vote.

7067. Mr. *E. Buller.*] He would not have the power of enforcing the delivery of the title till he paid his bill?—No, he would not.

7068. *Chairman.*] Were those titles ever delivered to the disponees?—In Caithness they were all delivered, and held by the disponees five minutes, and then returned to the political agent, and a person was produced at the Registration Court to swear that he saw the delivery of all the deeds.

7069. Were the disponees enfeoffed?—I think in no instance in Caithness; in some other counties they were enfeoffed.

7070. Sir *William Rae*] Were there any back tacks in any of those cases?—I have seen no instances of back tacks in Caithness at all; I know of their existence in Selkirkshire. I never investigated personally a case in which there was a back tack.

7071. Were there none in Roxburghshire?—Yes, there were; I recollect some there.

7072. *Chairman.*] In those cases in Caithness you say the parties were not enfeoffed?—I think they were not.

7073. Was there any evidence to show who was in the receipt of the rents?—In most cases a small sum, amounting probably to a half-year's rent, was paid to the purchaser. The rents were collected by the factor for the grantor, who handed a portion of them to the purchaser. A great reliance was placed upon the fact of the purchaser having received a half-year's rent.

7074. Do you mean that they handed them a portion of the rent which had become due?—Yes, up to the first term.

7075. Were the rents which had fallen due previous to the investigation in September 1836 proved to have been paid to the purchasers?—A small part of them. I do not think it was ever proved that the whole rent had been paid to the purchasers; of course they would have a right to exact the payment.

7076. Was the purchaser, according to your evidence, in the receipt of the rents?—He was in the receipt of the rents, and no interest, of course, would be payable upon the bills in cases where they were a twelvemonth's date until the expiration of the year.

7077. Mr. *Ferguson.*] Did any of the bills specify the interest payable upon them till the principal sum was paid?—None of the bills, I think.

7078. Is it not customary in Scotland to raise money on bills, bearing that they are to pay such an interest until they are paid?—I believe it is.

7079. Do not those bills frequently remain in existence many years consecutively, bills bearing a specified interest?—I think it is customary to do so with parties engaged in extensive money transactions. I think it is not common in the case of transactions which take place here; it is not usual for gentlemen to give bills.

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7080. Sir *William Rae.*] Were those life-rents objected to in Caithness?—They were.

7081. By you?—Yes.

7082. The objections were repelled?—Yes.

7083. What was the nature of the objections you took?—We were obliged to take objections, to cover all circumstances; but the real objections were, that the rights were nominal and fictitious, that the parties were not *bonâ fide* owners, that no substantial interest had been conveyed; any legal objections which occurred in the particular case were taken.

7084. How were those supported, by the oath of the party, or otherwise?—In some instances by the oath of the party; whenever the party was not resident that was refused, unless we cited him by a messenger.

7085. Do you consider the decisions in conformity with the Reform Act, upon the whole?—My opinion is, that the decisions in favour of non-resident parties, by not compelling them to attend, except when personally cited, were not consistent with the Reform Act; but that is only my opinion. The Court were divided upon that. I think the intention of the Act was, to substitute a statutory obligation for the ordinary form of citation, and that if the party received a copy of the objection through the post in the terms of the Act, he was not entitled to plead a want of citation.

7086. In those cases in which he did not appear?—Yes, if he resided beyond the limits of the county the sheriff held he could not be held confessed.

7087. In cases where the parties did appear, were the decisions, in your opinion, conformable to the terms of the Act?—I think they were generally conformable to the terms of the Act; I think the sheriff's decisions were extremely fair; I have no reason to say that the decisions of any sheriff have been otherwise than extremely fair.

7088. Lord *Stanley.*] You have just stated that you consider those decisions to have been all very fair according to the Reform Bill; will you state whether you have considered the possibility, by legislative enactment or otherwise, of separating those votes which technically comply with the provisions of the Reform Bill, but where there is no real interest vested in the parties, from those in which there is such real interest vested in the parties?—I think in the case of all those rights to which I have alluded, created for the first time since the passing of the Reform Act, and which had no existence in the way of business in Scotland previously, it is impossible, so far as I can conceive, to continue the qualification to those rights and yet separate between the *bonâ fide* and the colourable transactions; I think the rights themselves are of a nature affording such great facilities for the manufacture of colourable votes, that if they are continued at all it is difficult to separate the colourable from the *bonâ fide* qualifications.

7089. Will you state those new qualifications under the Reform Bill in Scotland which you find to be liable to this dilemma, that you must either discontinue them altogether, or it is impossible to separate the colourable from the real votes?—I think life-rent rights when not acquired under family settlements, marriage contract or succession, and not held in virtue of office are all liable to that objection.

7090. Would you, therefore, as the only remedy for the inconveniences to which you advert, recommend the repeal of so much of the Scotch Reform Act as enables parties to obtain a right of voting by life-rent?—So far as I have considered the subject, I think that one of several remedies which would obviate the objection.

7091. Can you state any remedy which you would consider less objectionable than such an interference with the provisions of the Act, which, with regard to most of those rights of voting, places the English, Scotch and Irish on the same principle of voting?—I think there are several others, but that is of considerable importance, because the system of creating life-rent votes is the one which affords the greatest facility for the manufacture of colourable rights.

7092. With regard to life-rent votes, you can suggest no remedy for the purpose of separating the colourable from the real, but the putting an end to such rights of voting?—I do not think there are any in Scotland who are in possession of life-rent rights of the kind to which I have alluded, except those who have either acquired them by transactions for the sole purpose of acquiring the franchise, and which may be colourable (I do not say they are all colourable, but may be colourable,) and the case of persons who have acquired them by succession under family settlements.

7093. You see no mode of separating the colourable from the real ones, except that

that of preventing any such rights being acquired in Scotland giving the elective franchise?—In regard to life-rent rights, I confess, though certain remedies might be suggested which would go partly to effect that object, I do not think any remedy would completely remove the objection, but the destruction of a right, which I conceive not to exist in Scotland at all, except under such circumstances as I have above stated. I do not think that that will prevent the holding life-rent rights in Scotland, except where the party grants a life-rent and reserves the fee, as in the case of transactions for the creation of votes.

7094. Will you have the goodness to state to the Committee any measures which have occurred to your mind as affording a partial remedy, short of the entire disfranchisement of the whole class of life-rent voters?—I think enforcing a residence in the case of every life-renter would do something; I think the enforcing of enfeoffment would do something more; and I think the deducting of burthens on the property before you estimate the value, would do something more; but I think all would be inoperative still, if life-rent rights so acquired remained, I mean joint life-rents and life-rents by purchase of which the party granting reserves the fee; that those rights are all unknown in real transactions, and therefore that the removal of the right altogether is no hardship.

7095. When you say unknown in real transactions, do you mean that you do not consider it a real transaction if a person non-resident purchases a life-rent for the avowed purpose of obtaining the franchise, even though he should have paid the full value?—It is a real transaction for the creation of a vote, but it is not an ordinary transaction in the way of business; my understanding is, that in affixing the franchise to the acquisition of property, the Act intended to affix the qualification to the rights known in ordinary transactions.

7096. Mr. *Warburton.*] Is it uncommon in Scotland for parties to purchase rent-charges, secured upon landed property, for the life of the purchaser, not for the purpose of creating votes, but for the purpose of having annuities well secured?—Very uncommon.

7097. Suppose such a *bonâ fide* transaction, would you propose to grant to such a purchaser the right of voting by reason of his rent-charge so purchased?—I confess I am not disposed to grant the franchise; there may be probably a hardship, but I think, on principle, that I should not confer the franchise on any such rights, which may extensively and with difficulty of detection be applied to the creation of fictitious votes.

7098. Do not the inconveniences which you feel to be incidental to those life-rent rights of voting, depend upon the large proportion that such votes bear to the total number of the voters in the Scotch counties?—The inconveniences are greatly increased by the smallness of the constituencies.

7099. Should you think that any thing which tended to increase the constituencies, as, for instance, taking a less annual sum than 10 *l.* a year as the qualification, would tend to diminish the disadvantages of which you speak?—I am not sure that it would; I rather think that the same property which can be converted into 10 votes might then be converted into 20 votes, and the proportions would be preserved; but if it is confined to those within the county, I am not in the least opposed to extension.

7100. Suppose you extended it to householders in the county, that would effectually destroy the creation of fictitious votes of this description?—I do not know that that would effectually destroy it, but I think the creation would be much more difficult under the household suffrage than under a property suffrage of 5 *l.*

7101. *Chairman.*] In your statement that you conceived the right of voting ought to be taken away from life-renters, did you mean to include all life-renters, or only those which have originated since the passing of the Reform Act?—I meant only those which had been created for the first time since the Reform Act; my object is to bring things back to that which was at first the fair honest constituency of the county.

7102. Lord *Stanley.*] Will you explain what you meant by the deduction of all burthens?—By the law at present in Scotland, if the rent of a property be 100 *l.* a year, ten life-rent votes may be put upon that; now I think it would diminish the power of creating life-rents very considerably, and therefore diminish the power of manufacturing votes, which may be, and I think frequently are, fictitious, if before you calculate the annual value, you deduct the heritable burthens upon the subject, and then take the beneficial interest accruing after the deduction of those burthens.

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7103. In the event of a man having an estate of 500*l.* a year burthened to the extent of 300*l.*, the effect of that would be, that he would be enabled only to create 20 life-renters instead of 50 on the same property, but there would be no alteration with regard to the qualification of the 20 as compared with the qualification of 50?—No, it would be only a diminution of the power to create.

7104. It would be a diminution as to the number, but would be no alteration in the nature of the qualification?—No.

7105. Mr. *Buller.*] Is it the case that a man having burthens on his estate, may convey his estate to a purchaser so as to confer the right of voting?—It is; a property may be burthened above its value, and yet he may create qualifications to the extent of the whole rental of his estate.

7106. Then, in point of fact, a man may grant away the whole securities of his heritable bond?—The bond continues as against the property in whatsoever hands it is.

7107. Lord *Stanley.*] In that case what security does the life-renter possess for the payment of his life-rent?—He has neither security nor interest.

7108. Viscount *Stormont.*] Would any person purchase a life-rent upon a property which was burthened to the full amount of the value where enfeoffment could be taken on the heritable bond?—I have no doubt no man would do it where he wished a real interest in the property, but they will do it if their object is only to get the vote.

7109. Mr. *Dunlop.*] Have you ever known an instance of that?—I cannot say from my personal knowledge, that I have; I have heard there are such price. instances.

7110. *Lord Advocate.*] In that case the party would not pay the price till the heritable debts are removed?—I do not think he would mean to pay the

7111. The common arrangement is, that the price shall not be paid till the heritable debts are removed?—The common engagement is, that the seller shall discharge the incumbrances.

7112. Is it not the common course that the debt is allowed to remain, and that the purchaser pays over such part only as the estate is worth beyond the debt?—I believe that is very common.

7113. Mr. *Divett.*] Are the Committee to understand that the construction of the law of Scotland extends to this, that an individual may be considered to have a good vote, having a claim to a life-rent, when, in point of fact, from the charges on the property, it is very probable he may never get a farthing from it?—I think, without exception, the decisions of the courts of Scotland come to this, that if the property is burthened to the full value, yet the life-renter can, though the interest exhausts the whole annual rent, give his vote, and no account is taken of the burthens upon the property.

7114. Then a person may have a vote on a nominal qualification of 10*l.*, from which he may not derive one farthing benefit?—That is possible, certainly.

7115. Lord *Stanley.*] That applies equally to landed property and to house property?—It applies to every sort of property.

7116. The value of property confers a qualification without any reference to the incumbrances, though it may extend over the whole value?—It does.

7117. *Chairman.*] In the cases of persons wishing to acquire property for political purposes, is it an object with them to get property which is burthened with debt?—For the purpose of creating votes there is nothing so desirable as the acquirement of property burthened to its full value; if it is burthened above its full value they may not get a purchaser, because he may fear to become personally liable; if it is below its value it is objectionable, because a small sum would have to be paid to make up the full value.

7118. Mr. *Ferguson.*] Has the possessor of a heritable bond, provided he be enfeoffed upon that bond, the power of creating a life-rent upon his bond?—That confers no franchise; heritable securities are expressly excepted in the Act.

7119. Mr. *Warburton.*] Is it the case that those properties which are burthened to their full value, are rather sought after by persons desirous of extending their political interest?—I believe that they are sought after by such persons.

7120. Lord *Stanley.*] You have stated your views with regard to the separation of colourable and fictitious votes from *bonâ fide* life-rent votes; will you state the distinctions you would draw in cases of other descriptions of votes, and the remedies which you think might be applied for the purpose of drawing such distinction?

tinction?—In the case of the life-rent votes, those new life-rents, I think it is impossible to continue them with any prospect of separating the real from the colourable transactions. With reference to joint proprietors again, I think the same rule may fairly be observed, that no joint proprietorship ought to afford a qualification except when acquired by succession, marriage contract, or family settlement, or by persons engaged in partnership, and where the property becomes part of the stock of the partnership.

7121. You do not consider that that question of joint ownership, either on lands or houses, was for the first time introduced into Scotland since the passing of the Reform Bill?—No, I do not; I think there were joint ownerships previously existing and recognised as affording a qualification.

7122. There having been that species of property, on what ground would you, in Scotland, prevent *bonâ fide* owners of that description of property from enjoying the same rights enjoyed by a similar class of persons in England and in Ireland?—I think, as I said before, the principle of a property qualification is contrary to the admission of any class of voters to the franchise, unless where they have acquired their rights according to the usual modes in which those rights are acquired in ordinary transactions, because the purchase of the test ought not to be encouraged; the principle is, that the party should obtain the right irrespective of the vote, and that the vote shall be incident to the possession of the right, as an ordinary transaction; not the right purchased, because it is the test, and for the purpose of the vote.

7123. Therefore, in pursuance of this principle, you would desire to deprive persons who have a *bonâ fide* property of that right of voting which accrues to that property under the existing law in all other parts of the empire?—I do not think it would have that effect. I do not think there are any cases of such joint proprietorships really acquired in the course of ordinary transactions; it might be found whether they were partnership concerns or under family settlements; such a case as 20 people buying a farm or buying a house, was never heard of in ordinary transactions.

7124. Mr. *Divett.*] You think the inconvenience arising from such a description of property would, in ordinary cases, prevent persons entering into such transactions?—Yes, and I think the law of Scotland does not look with favour on joint possession; there is a process very well known for the division of commonties or common properties, which shows distinctly that the spirit of the law is opposed to the joint possession of property by a number of people.

7125. What is that process?—Where properties are held jointly, such as commonties, you can obtain a division of the commonty, a separation of the rights.

7126. Can any one individual insist upon that?—Yes.

7127. Mr. *Divett.*] The law has provided that remedy against what is considered a deterioration of the property?—Yes, and a great inconvenience.

7128. Sir *William Rae.*] Does that apply to all heritable subjects, or only to particular ones?—The acts as to division of commonties do not apply to all heritable subjects, but I think the inconvenience attaches to all.

7129. If there is a joint property in three or four individuals, may any one of them enforce a division of the property?—I think any one may enforce a division of the property.

7130. Mr. *E. Buller.*] You would deprive all persons who acquire property by joint ownerships of their right to vote, with certain exceptions?—I would continue the franchise to the right of joint proprietorships in all cases where that right has been known in Scotland in ordinary transactions previous to the passing of the Reform Act.

7131. How would you define them?—Partnership rights, where parties are connected in business; supposing two men in business buy a house for a common purpose.

7132. There you would draw a broad line of distinction, excluding persons uniting in partnership to buy an inn?—If there is a partnership to buy an inn, that is a very rare thing, and I think it would not be a hard case if that did not convey the franchise; it would be better they should be victims to the principle than break in upon the principle. If their object is to buy ten votes, I think that ought not to be done.

7133. How can you tell what their object is?—I have heard it acknowledged; it is considered the proper tactics in the Registration Court to avow that their intention was to buy the votes.

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7134. Viscount *Stormont.*] Can you embody that in an Act of Parliament?—I find it embodied sufficiently by confining the right to that supposed to exist in ordinary transactions.

7135. There were certain individuals who were owners of the inn at Selkirk previously to 1832; should you have held those individuals were entitled to vote on such property?—I certainly, as interpreting the Reform Act now, must say, that they had good qualifications.

7136. Should you say that they ought to have had them?—Yes, I should say that they ought to have had them also; but my object is to get a better system to prevent the creating fictitious votes; and, though under a system whereby fictitious votes may be created, some good votes may be created also, I think the destruction of the system is of so much consequence, that individual cases of hardship must yield.

7137. Sir *Hugh Campbell.*] What do you mean by the word fictitious?—Votes where it is not intended to convey any real right, but where there is every appearance of a real transaction.

7138. What do mean by real right?—I mean the conveying a substantial interest.

7139. Consisting of rent or other advantages?—Yes.

7140. You do not consider a vote fictitious, if the money is paid for it and the rent paid out of the subject to the person who possesses it?—I do not consider it fictitious; I consider that it may be objectionable on other grounds; it is not fictitious in the proper sense of the word fictitious.

7141. How does it alter the case where 10 or 12 people join together and buy property, and they each receive their portions of the rent?—I do not think the circumstance of the 10 buying makes it fictitious; but I think it is plainly easier to get one common subject conveyed to 10 individuals, for the purpose of the vote, than it is to get 10 separate subjects, and convey them to 10 separate individuals.

7142. Then a vote being fictitious or not, consists in the manner in which the property is acquired, whether it is actually paid for, or not paid for?—Yes, I think the vote is fictitious or not, according to the intention; the subject is conveyed for an adequate price, but a vote may be very bad and very objectionable, though not in the strict sense of the term fictitious.

7143. Mr. *Ferguson.*] In the altered times, do you not think it is very natural for persons having the means to endeavour to acquire a political right in a county?—I think that it never was intended by the legislature that the franchise should become a subject of speculation, or that political interest should be bought at all.

7144. An individual having personal property, the Reform Bill enabling him to do so, would you debar him from acquiring the right?—No, I would not dbar him if he acquires it by a known mode, by a fair transaction.

7145. Was not the object of the Reform Bill to extend the elective franchise?—It was.

7146. Does the Reform Bill specify on what terms and in what manner those rights are to be acquired?—It specifies certain rights as affording a qualification. I have already said, that I infer that those rights must be assumed to be such as entered into the contemplation of the legislature, having a previous existence in ordinary transactions, and not rights created solely for the purpose of acquiring a vote.

7147. Was not it the object of the Reform Bill to destroy objectionable rights, and to give facilities for the franchise being acquired by a much more numerous electoral body?—I think the object of the Reform Bill was to give the franchise to the local constituencies, and to connect the franchise with the possession of a property qualification; but I think it was understood that that qualification should be one acquired in the course of ordinary transactions, and not purchased by strangers to neutralize the local constituency.

7148. Is it not natural that all persons having the means, should endeavour to profit by the means afforded them, and acquire the right of voting by purchasing property?—It may be natural, but I do not think it is justifiable to purchase votes in a county with which a man has no connexion, for the purpose of overruling the local constituency.

7149. Mr. *Warburton.*] Supposing that acted on to any extent, would not any local constituency be altogether neutralized or overwhelmed?—It is quite certain that in every case non-residents must overcome the local constituency.

7150. Mr. *Ferguson.*] The property of the county is thus represented?—It is only

only my humble opinion; but my opinion is, that property is not represented, but that the man having property is a test of his fitness, and the purchase of the test ought not to be encouraged.

7151. Viscount *Stormont*.] You stated just now that it was your opinion, that there was a great difference where a bill was given for property, and where a purchase had been paid for in cash?—Yes, with regard to the fictitious character of the right, I think there is a considerable difference.

7152. Where the party makes a purchase of lands either on long lease or in annuity, where there is no cash paid for it, and he only gives a bill for the price, are you of opinion that vote is objectionable?—I am of opinion that the vote may be colourable, and the difficulties of ascertaining the truth are such that it is a sort of qualification that ought not to attend the franchise.

7153. Is that because the purchaser may not derive 10*l.* a year beneficial interest?—Yes, because he may not acquire a *bonâ fide* beneficial interest to the extent of 10*l.* per annum.

7154. Where a party gives four per cent. on such bill for 200*l.*, and he receives rent from the subject to the amount of 10*l.* per annum, he would have only 2*l.* beneficial interest in that property; do you hold that an objectionable vote in consequence of his not having a beneficial interest of 10*l.* per annum?—I should not hold that that was an objectionable vote, if there had never been a creation of votes previously, because on the principles of the Act it is clearly a good vote under the Act; but I conceive since there has been a creation of votes the deducting the burthens would occasion a great difficulty in the creation of those votes, and I think the deducting the burthens is fair and just.

7155. Do you think it was the intention of the Reform Bill to confer the right on those who had not such beneficial interest of 10*l.* a year?—No, I do not think it was the intention of the Act to confer it upon those who had no such beneficial interest; that I believe is according to the English Reform Bill.

7156. According to the Reform Bill, a man may have borrowed so much money upon the property on which he claims that he has no beneficial interest whatever?—That is quite possible.

7157. A party borrows money on a house he intends to build, and he gives a heritable bond on that subject when built; the interest of that bond may amount to nearly the value of the rent of the house itself, in which case he derives no beneficial interest whatever, but under the present law he is entitled to vote; do you consider that that is an objectionable vote or not?—I confess I think it is an objectionable vote; I think he should have a beneficial interest; but that is mere matter of opinion.

7158. Have you in your experience ever known of parties for political purposes lending money upon properties for the purpose of preventing a party from selling his property?—No, I never heard of loans to a party, except lending him the money to buy the property. I have known many instances of parties for political purposes lending the price, and securing it upon the property. I am not aware of money being lent on property for the purpose of preventing a sale.

7159. If such a system were to prevail, should not you consider those votes as objectionable as those which you have mentioned before?—I should think the vote equally objectionable, if, after deducting the burthen, there was not a beneficial interest to the amount of 10*l.* a year, in whatever way the burthen was created.

7160. You would consider that vote to be objectionable where there was not a beneficial interest, clear of all burthens, to the amount of 10*l.* a year?—I certainly think that objectionable; at the same time I am aware that change is objectionable also, on the principle of raising the franchise.

7161. In what manner would you propose to remedy the evil arising from the purchase of property by giving a bill, and by not paying for it in cash, and afterwards claiming a right to vote upon it?—I do not think there is any way in which that special case can be met; I think the life-rents are all bad; I think the case of joint proprietorships objectionable except when acquired in ordinary transactions, which were known before the passing of the Reform Bill. I think that the acquisition of votes by non-resident parties is extremely objectionable, and must ultimately end in the neutralizing every local constituency, and that enforcing residence is of great consequence.

7162. You stated, in a previous part of your evidence, that you knew of several parties who, to the best of your belief, had either acquired life-rents or properties

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for which they had given only a bill, and as to whom, you knew from their circumstances that it was not in their power to pay those bills, what remedy have you to suggest for the creation of that description of votes with regard to single or several properties either in fee or long leases?—I confess I know of no remedy. A bill is, by the law of Scotland, payment, and it would be a very great change to say that a bill was not payment for the price; I am not prepared to say that that change could be or should be made; I think that all that can be done is, to destroy the facilities to the creation of improper votes; some improper votes may escape detection after all.

7163. Would you deduct the heritable burthens from the value of the property before the man made a claim to vote?—Yes, I have mentioned that.

7164. Is that the only remedy you would mention?—The deduction of heritable debts, the enforcement of residence, except where the property is above 50*l.* a year, the reason for that being, that where property is very large, they are very often parties residing out of the county perfectly *bonâ fide*; where the properties are small, the *bonâ fide* non-residents are extremely rare, from the great difficulty of managing small properties at a distance from their residence.

7165. Mr. *Ferguson.*] Does it not appear to you very invidious to make a distinction between small and large proprietors?—I do not think it would be considered at all invidious, the object being to destroy the creation of votes; it is quite clear no man will create votes by giving a hundred or two a year.

7166. Would not it give the rich man an advantage over the poor man?—I do not think it is an advantage.

7167. *Lord Advocate.*] In the case where bills are given, there is no heritable debt?—No.

7168. Therefore where bills are given, the deduction of the heritable debt would be no remedy at all or security against improper votes?—No; other remedies must be sought for, and I know of no other remedy but the enforcement of residence, and the destruction of life-rent qualification.

7169. Mr. *Buller.*] You propose the disfranchising of all life-rent voters, and the disfranchising of joint proprietors; another mode of creating votes has been by joint tenancy; what would you propose in that case?—I do not propose the destruction of all life-rent qualifications; I except the classes which existed before the Reform Act.

7170. With few exceptions, you propose the extinguishing of those rights?—Yes.

7171. With regard to joint tenancy, what do you propose?—To enforce residence in the case of joint tenants would be of great consequence, because a *bonâ fide* tenant will be almost always found to reside upon a man's property.

7172. Why should not all the sons of a farmer be inrolled upon the farm as joint tenants, having really no real interest in the stock or in the profits?—They may still be inrolled; and to limit the number of joint tenants to two, the number whch I believe was proposed at the time of the passing of the Bill, would be a great improvement.

7173. If you were to disfranchise a great proportion of the life-renters, a great proportion of the joint life-renters, and limit the joint tenancy, would not that reduce the constituency in the smaller counties in Scotland within very narrow limits?—I do not think it would; when I speak of constituency, I mean the genuine constituency; I do not think it would reduce the genuine constituency at all; it would only exclude those created for the purpose.

7174. Would not that prove that the genuine constituency is an extremely small one?—It would.

7175. What was the amount of the constituency of Selkirk in the year 1832?—I really forget, but very small; I believe about 280; Caithness still smaller.

7176. Are you not aware that the election in that county was carried by a majority of nine?—I am quite aware of that.

7177. Supposing the constituency to be extremely limited, and the majority to be nine; after you have introduced the remedy you propose, would there not continue to be a strong temptation to convey property for the sole purpose of conveying the qualification to vote?—There would; certainly the temptation would remain.

7178. Would not a vote in such a county be of so much value, that a large proprietor would think it worth his while to split a freehold into small 10*l.* shares;

shares, and sell them to persons for the purpose of rendering them voters, and carrying the election?—Certainly he would; he has done it already.

7179. So that the remedies you propose would still leave the county open, even if you enforce residence to the manufacture of votes to an extent which would turn the election in so extremely small a constituency?—If residence be enforced, the remedy would be plain, because they could not create more votes in Selkirkshire than there were men of mature age in the county, and they could not get enough men of their way of thinking to turn the election.

7180. Do not you think that many men of small property, for such an object as an estate of 10*l.* per annum, would come and reside in the county upon it?—I am far from saying those remedies would remove the objections; this I think would defeat itself.

7181. Do not you think that there would still be a power of creating votes to influence the election?—I am afraid there would.

7182. Mr. *Warburton.*] If there was a real interest in the property to the amount of 10*l.* a year, and a conveyance to the man of such property, would not that go far to prevent the creation of votes of that description?—That would prevent it very much.

7183. Can you state the number of householders in the county of Selkirk?—I cannot, I think there are very few, except in the towns of Selkirk and Galashiels, others being farmers, or the servants of those farmers; in the Registration Court, of course, we made no inquiry on that point of those who claimed the franchise.

7184. Sir *Hugh Campbell.*] You have said that you would limit joint tenancies by means of making them reside upon their farm; what provision would there be for the case of led farms; do you think they ought to be represented by residents? suppose a farmer, having one or two sons, has a farm in the county of Roxburgh, that those two or three sons residing with him have an interest in the farm, and conduct the farm with him, and are inrolled in the county of Roxburgh; supposing that farmer to have a led farm in the county of Selkirk, of which there are many, he and his sons being resident in the county of Roxburgh, would you allow them to be inrolled in the county of Selkirk?—I would not; they are represented in the county of Roxburgh, and it would be no hardship to prevent their being inrolled in the other county also.

7185. You would not allow them to be inrolled in the county of Selkirk upon that led farm?—No, I would not.

7186. Viscount *Stormont.*] Take the case of a farmer who takes several farms in the north; he cannot live on any one of them, but still he has a large estate?—The living upon the farm in the case of grass farms is out of the question. He cannot do it; but if he has an agricultural farm, and two parties are joint tenants, and one lives upon the farm, and the other in Edinburgh, I do not think the one living in Edinburgh is entitled to the franchise in the north.

7187. There are many led farms where there is no residence whatever, and perhaps the tenants live in the adjoining town?—I should say if he works and possesses it, and enjoys the benefit, that should be sufficient.

7188. Then residence is not your test in such a case?—I think it is so difficult to get at the question of possession or occupancy, unless residence is enforced, that it is desirable residence should be a test.

7189. One man resides on each farm, where there are four or five in different counties there, there is residence?—There are not many cases of joint tenants who reside altogether out of the county, who are not represented any where.

7190. Sir *Hugh Campbell.*] What would you call residence, or how would you define it; for what period of time ought a man to reside?—Those are questions of degree. I think it would not be difficult in examining the party, to know whether it was a got up residence, or he was actually resident on his farm. The Reform Act defines it in a burgh under the term personal residence.

7191. You think it should be defined in some way or other?—Yes.

7192. *Chairman.*] Was there any thing peculiar in the life-rent leases in Caithness, besides that you have stated?—Instead of being conferred on non-residents, they are conferred on resident parties in an humble situation of life, and the titles held by the grantor or by the political agent.

7193. Are any of them in a dependent situation of life?—They were masons, tailors and carpenters, and one man a shepherd; that kind of persons.

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7194. Were they granted by the persons in whose service they were?—The one in favour of the shepherd was granted by his master.

7195. Mr. *Divett.*] Do you apply that observation to all, except the three brothers of Sir John Sinclair?—No, not all; there were a few in a higher situation of life in the county.

7196. *Chairman.*] Were there properties purchased for the making of votes?—They have begun that system.

7197. Was there any peculiarity in those purchases?—A property was purchased from a gentleman of the name of Forsyth, and several life-rents granted upon it; the peculiarity was, that the deed set forth the payment of the price as to the seller, and on examination, the parties acknowledged that they had paid no price to the seller, or made any bargain with the seller; their bargain was with Mr. Horne, as the seller, having, I presume, sold to Mr. Horne first, and then conveyed to those parties, but the deed narrated the payment of the price to the seller.

7198. Did they know of the transaction?—They did not know what subject they were to acquire over; they knew they were to get a vote given them.

7199. Did they give the consideration for the price?—They had given bills either to Mr. Horne himself or Mr. Shiell, the county agent; Mr. Forsyth having sold to Mr. Horne, and he having conveyed to the life-renters.

7200. *Lord Advocate.*] How did he convey the fee?—He conveyed the fee in a disposition to Mr. Horne.

7201. *Chairman.*] In what situation of life were those life-renters?—They were every one of them in an humble situation of life.

7202. Who were they?—James Waters, William Campbell, Sinclair Murray, Charles Keith, Peter Brown, James Grieve, Donald Swanston.

7203. What were they?—The first five were feuars on small properties in the village of Halkirk, possessed of small feu rights, but not possessed of sufficient to give them a qualification, and they took these life-rents to eke out their qualification.

7204. Was there any thing peculiar in the other cases, or were they ordinary cases?—They were all, I think, the ordinary case of the creation of a life-rent.

7205. Sir *Hugh Campbell.*] You cannot state positively that they were not in circumstances to pay for those grants?—I cannot state that as to all of them; I examined one or two who admitted they were not provided with the means.

7206. *Chairman.*] Are there any other cases which were peculiar?—No, I do not know that there was any thing peculiar in the other cases.

7207. You stated at the beginning of your examination the effect of the creation of such votes; does that which you stated apply peculiarly to the county of Caithness?—I think the consequences, in the county of Caithness, likely to be worse than in any other county I have seen; the voters are few in number; the people are extremely impressed with the sanctity of an oath; they are unwilling to take oaths, and one man in particular refused to come forward and make an oath, and was rejected because he lived within the county; if he had lived without the county he would have been admitted.

7208. Have you had an opportunity of learning the opinions of others on the subject?—I have had an opportunity of knowing the opinion of many clergymen and others, in the county; all of them were against the creation of life-rents upon the ground that it is productive of immoral consequences. I speak of persons on both sides of the question.

7209. Viscount *Stormont.*] Have life-rents been created by both parties?—Not one on the liberal side in Caithness, and no joint proprietors on the liberal side; I believe there were no joint proprietors on either side created in that county, they were all life-rents.

7210. With the exception of that life-rent, the rest of the constituency is a *bonâ fide* constituency?—I should mention that there were a few purchases made, on the liberal side, of rights of proprietorship for the sake of the franchise alone, but by parties resident within the county.

7211. You hold those to be part of the *bonâ fide* constituency?—I do not doubt that they were *bonâ fide*; they were investigated, and the money was paid in cash in most cases.

7212. *Chairman.*] Were any of those purchases by the liberal party paid for by bills?—One or two.

7213. Did you consider those as *bonâ fide*?—I think, in the individual cases, so far as I had an opportunity of examining them, for they were not fully investi-

gated

gated by the opposite party; they were questionable votes, and had better not have been granted, but they were fair votes in this respect, that the obligation was binding upon them in respect of the bill.

7214. Were they persons in a situation of life to have paid the price?—Yes.

7215. Were they objected to?—There were some legal objections heard against them, but their *bonâ fide* character was not questioned.

7216. You state that in the Registration Courts of Scotland there is great difficulty in discovering what are nominal and what are real votes; do those difficulties apply equally to the county of Caithness as to the other counties?—I think in a greater degree than in the others, for this reason, that the Appeal Court is held in Inverness, a distance of 200 miles from Thurso, and every witness must be brought there, unless you avoid that by making an arrangement with the opposite party; of course, in many cases, it would be avoided. I think that some were so arranged.

7217. Viscount *Stormont.*] This causes great expense?—Yes, a great expense, so as to prevent parties appealing in the case, unless they can make an arrangement.

7218. *Chairman.*] Does this throw a great difficulty in the way of objecting to bad votes?—It throws great difficulty in the way of protecting good votes, or opposing bad ones.

7219. Are there any other objections to the system of registration?—I think, in addition to the objection to such an arrangement as that mentioned, it is to be regretted that there is no record of what passes at the Registration Court. I think it a great objection, that a party examined in the Registration Court on oath can be examined over again on the same matter in the Appeal Court, and refresh his memory.

7220. Mr. *Warburton.*] An appeal should lie only on matters of law, in your opinion?—My opinion is, that the notes of the sheriff should be declared a record of the fact, and nothing appealed but the points of law.

7221. *Chairman.*] Suppose there are 40 joint proprietors claim, and the qualification is supposed to be a bad one, may not the whole of the 39 be in court and hear the evidence offered by the first?—That is a question at the discretion of the court; in practice they have always been present, but I have no doubt if the sheriff were asked to desire them to retire, he would not refuse it.

7222. You have practised before many courts; is it the case that the witnesses have been all present and heard the evidence given on all the cases?—It is, I believe, invariably the practice.

7223. After a witness has been examined, does he remain and hear the evidence of the other witnesses?—Yes.

7224. There is no note kept of that evidence?—No note that can be referred to.

7225. In the Appeal Court this witness can be examined again, though he may have heard the witnesses on whose testimony the claim has been rejected?—Yes.

7226. Is there any way of preventing his varying his evidence?—No way whatever; the sheriff's notes cannot be referred to; it can be done only by the cross-examination of the other party.

7227. Does not that facilitate the putting on bad votes?—Yes, I think it does.

7228. Viscount *Stormont.*] If it were desired, you think the sheriffs would order the witnesses to withdraw?—Yes; I have no doubt the sheriffs would always do it, for I must say the sheriffs are inclined to act extremely fairly.

7229. *Chairman.*] Have you examined witnesses when you felt that their remaining in the court had been an advantage to them?—Certainly.

7230. Have you asked for their being removed?—No, I have not, because it was not done in other cases; we have always acted in that way.

7231. Can you state positively that if the counsel applied, they might procure their withdrawment?—I cannot state further than that the sheriffs have always been willing to afford every fair accommodation to counsel, and I cannot but believe it would be done in this instance.

7232. You never saw it tried?—No.

7233. Viscount *Stormont.*] Do you believe that there is any difference in that respect between that court and other courts?—In Scotland a witness is never allowed to hear the evidence of another witness; it would invalidate the evidence if he was proved to have heard what the preceding witness had said.

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7234. Mr. *Ferguson.*] Have you ever considered the probable number of voters who would be disfranchised in the empire if residence in the case of joint proprietorships were to be a condition?—No, I have not considered it so extensively, but in several counties I have, and I am quite satisfied that the number of parties disfranchised who did not obtain their rights for the mere sake of the vote would be extremely small.

7235. *Lord Advocate.*] When you referred to residence as a proper qualification, did you mean residence upon the property on which the franchise arose, or residence within the county?—I meant residence within the county.

7236. You do not consider that residence on the property on which the franchise is acquired ought to be insisted upon?—No, I think the object could be quite attained without making residence on the subject of the franchise necessary.

7237. At the registration in 1832, with the exception of those on the old roll, they were all, in your opinion, genuine qualifications, and not made for the purpose of acquiring the right?—No, all fair, genuine qualifications, and the great majority of them resident.

7238. When was there a change?—In Selkirkshire, I think it began in 1834, but I cannot speak to that.

7239. In what year did the change chiefly take place?—In 1834, 1835, 1836; not much in 1833, but a great deal in 1834, and increasing every year since.

7240. Have persons who disapproved of making those votes also acquired votes?—They have done so in many instances.

7241. Why have they done so?—They have done it in self-defence, in defence of the local constituencies. I have myself acquired two votes for that purpose, one in Mid Lothian and one in Peebles-shire; one is a joint proprietorship, and one a joint life-rent. I took them very reluctantly, being pressed upon me. I have never taken a vote in Ayrshire, where my father has an estate, because there is no such creation there.

7242. In what year did you take those votes?—In Mid Lothian in 1835, and in Peebles-shire in 1836.

7243. Do you know at what period such votes were first created in Peebles-shire?—There were none created till 1835; none in 1834, I believe.

Jovis, 16° *die Martii*, 1837.

MEMBERS PRESENT.

The Lord Advocate.	Mr. E. Buller.
Mr. Divett.	Mr. Warburton.
Sir William Rae.	

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. *Donald Horne*, was again called in; and further Examined.

Mr. *Donald Horne.*
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7244. *Lord Advocate.*] HAVE you had an opportunity of seeing the tables prepared by Mr. Patteson?—Yes, I have seen the three lists given in by Mr. Patteson.

7245. Does his statement with regard to the list of constituency in 1832 appear correct?—The numbers in the tables made out by me, in so far as they are embraced in Mr. Patteson's tables, correspond for 1832.

7246. The number of life-renters were 11?—Yes.

7247. Of these the residents were 10?—I think so.

7248. And they were all life-renters from office with the exception of three, who were life-renters in right of their wives, from family settlements?—There were eight

eight life-renters from office, and three life-renters in right of their wives, on the 10*l.* qualification.

7249. And their right arose from a family settlement?—I have no opportunity of judging, because I was not in the court in 1832, but in 1833 they were objected to and expunged.

7250. On what ground?—On the ground that they were the husbands of life-rentrixes, which, in the opinion of the judges, did not confer the franchise.

7251. Has there been any difference of opinion among the sheriffs on that subject, in different counties?—Not so far as my practice goes.

7252. What number of joint proprietors were there in 1832?—There were four joint proprietors.

7253. Do you agree in that respect with Mr. Patteson's tables?—Yes.

7254. Are Mr. Patteson's tables of joint tenants correct in 1832?—Mr. Patteson classes the joint tenants under 57 years' leases, and the joint tenants and occupants under short leases, together, and the total number corresponds.

7255. Have you any other observations to make with regard to Mr. Patteson's list of joint tenants in 1832?—No.

7256. As far as you know, do any of those franchises in 1832 appear to be created for political purposes, the 10*l.* qualification?—I do not think it possible they could, because the registrations commenced very soon after the passing of the Reform Act; the Reform Act passed on the 17th July 1832, and the courts commenced in the month of September thereafter.

7257. What was the number of life-renters inrolled in 1833?—One.

7258. Do you agree with Mr. Patteson's list as to the number of life-renters inrolled in 1833?—Yes, I do.

7259. Do you agree with Mr. Patteson's table as to the number of joint proprietors inrolled in 1833?—I agree with Mr. Patteson as to the number of joint proprietors inrolled in 1833, but he does not notice the case of Walter Hogg, sen., and Walter Hogg, jun., who claimed each as proprietors of the half *pro indiviso* of the property in Selkirk, on which Walter Hogg, sen., was registered as sole owner in 1832.

7260. Is that as to the numbers?—Yes.

7261. Were they admitted?—No.

7262. The question I put was, whether you agreed as to the number of proprietors inrolled in 1833?—I have said so, but I gave that further explanation.

7263. *Chairman.*] You agree with him as to those who were inrolled?—Yes.

7264. *Lord Advocate.*] Then Mr. Patteson's table is perfectly correct as to those inrolled, which is all he professes to give?—Mr. Patteson's tables, in so far as the numbers contained in my table are embraced, correspond with the table and states made up by me, and now given in.

7265. And is perfectly correct as to all the persons inrolled in that year?—Yes, except that he classes the joint tenants under 57 years' leases along with the joint tenants under short leases.

7266. Can you state how many there were of each?—There were two joint tenants under 57 years' leases, and seven joint tenants under the short leases.

7267. Can you state how many of these were inrolled under the interest of Mr. Pringle, of Whitebank, and how many in the interest of Mr. Pringle of Clifton?—I think the whole seven under the short leases were in the interest of Mr. Pringle of Whitebank, and five of them were previously on the register as single tenants, and that one of them was also qualified as owner of property, which he still retains.

7268. How many joint tenants were there on the long leases?—I have said two.

7269. How many joint proprietors were inrolled in the interest of Mr. Pringle, of Whitebank, in 1833?—Fifteen.

7270. Were there any joint proprietors inrolled in the interest of Mr. Pringle, of Clifton, in 1833?—None.

7271. Will you look at the table, and state whether there are any respects in the subsequent years in which Mr. Patteson's appear incorrect, and in which you differ from him?—In the states for the year 1834, Mr. Patteson does not include William Boggie as a joint proprietor, though his registration proves that he claimed

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one-half of a tenement of houses and gardens in the town of Selkirk; in my tables he is included as joint proprietor.

7272. Did any other persons claim that year or not?—I am not aware of it, I cannot trace them.

7273. If they had done so would you have known it?—Not on that description of property without seeing the deeds.

7274. *Chairman.*] In what character did William Boggie claim?—As proprietor of half a tenement of houses and gardens in Selkirk.

7275. That is not the case of a joint proprietor?—I think so.

7276. Did he claim as joint proprietor?—There must be a proprietor of the other half tenement.

7277. Who was the proprietor of the other half?—I really do not know.

7278. *Lord Advocate.*] Have you any other remark you wish to make?—In the state for 1835, the differences between Patteson's tables and the numbers in my list, are, first, that he states Sir Walter Scott as a life-renter, while in my tables he is entered as a tenant under a long lease in terms of his inrolment; that in Mr. Patteson's list of joint proprietors he does not include John Halding, brewer in Selkirk, though he stands registered on four-seventh parts *pro indiviso* of certain subjects in Selkirk; that he does not include James Haliburton, joint tenant of Tushielaw, and John Barthgate, in Galashiels, in the list of joint tenants, though they are both registered as joint tenants; and that he states the following persons as single life-renters, while they are registered as joint life-renters; to wit, George Brockie, farmer, Bowshank; Robert Ballantyne, carrier, Selkirk; Robert Fraser, merchant, Hawick; Charles Williamson, merchant there, and Walter Wilson, manufacturer there. In the states for 1836, the difference between Mr. Patteson's tables and the numbers in my tables are, first, that he states Sir John Murray Nasmyth, of Posso, baronet, as a single life-renter, while he stands registered as a joint life-renter; that he has omitted to include the following persons registered this year as joint owners on new claims, to wit, Sir William Scott, of Armun, baronet; Walter Scott Haldane, of Selkirk; William Currie of Lenthall; Sir David Erskine, of Dryburgh. With these alterations, the numbers in my states correspond with the numbers in Mr. Patteson's states.

7279. *Chairman.*] Then, except those points of difference that you have mentioned, Mr. Patteson's tables and yours agree?—They numerically agree.

7280. *Lord Advocate.*] Do they differ in other respects?—Yes; Mr. Patteson adds designations to some of the electors, which are not contained in the register.

7281. Mr. *Warburton.*] Give an instance?—Mr. John Grainger is entered on the register as residing at Jerdan Field, while Mr. Patteson designs him as factor of the Marquis of Lothian.

7282. *Lord Advocate.*] Is that incorrect, in point of fact?—Not incorrect, in point of fact; but there is no warrant in the register for so designing him.

7283. *Chairman.*] Have you enumerated all the points of difference between you?—I think I have in point of numbers; my states do not contain names.

7284. Sir *William Rae.*] You have agreed as to the agricultural tenants?—Yes, except that James Haliburton is an agricultural joint tenant, registered in 1835, and I think is not so entered in Mr. Patteson's state.

7285. Can you tell me how many agricultural tenants on the Duke of Buccleuch's estate were registered in 1832?—There were 29 in 1832.

7286. How many were joint tenants?—Eight, I think.

7287. How many tenants of the Duke of Buccleuch are now on the roll?—There are 36 agricultural tenants on the Buccleuch estate now upon the roll in the county of Selkirk.

7288. How many of these are joint tenants?—Thirteen.

7289. Then, since the passing of the Reform Act, what increase of agricultural tenants has taken place?—Just seven.

7290. Then, how many of these are joint tenants?—Five.

7291. Do you know the extent of the valued rent on the Buccleuch estate in the county of Selkirk?—The total valued rent of the county of Selkirk is 80,307*l.* 15*s.* 6*d.*

7292. What

7292. What is the Duke's proportion of that?—The amount of the Duke's valuation is 28,578*l.* 4*s.*, being more than one-third of the valuation of the county.

7293. Will you explain what the valued rent is?—The valued rent was taken by the Commissioners of Parliament before the Union, and is now the rule for the payment of cess and public and even parochial taxes.

7294. Mr. *Warburton.*] Was it the real rent?—That was the principle on which the Commissioners were directed to proceed; I suppose it was so.

7295. It was pounds sterling?—Pounds Scotch.

7296. Sir *William Rae.*] Do you know the extent of the real rent of the Duke of Buccleuch?—The present rent of his Grace's estate in Selkirkshire is about 10,000*l.* a year, independently of Bow-hill and all the lands round it.

7297. Do you know of any estate of 10,000*l.* a year in Scotland on which there are so few tenants registered as that now mentioned by you as applicable to the Buccleuch estate?—I do not.

7298. You had occasion to know originally the condition of large estates in Scotland in this respect?—Professionally I have had occasion to know, and otherwise.

7299. Mr. *Warburton.*] Can you state how many agricultural tenants' votes are registered upon any other estates in Scotland of 10,000*l.* a year?—No, I cannot; but I am sure that there are few instances in Scotland of such an estate having only 36 registered tenants.

7300. Sir *William Rae.*] I think you said that at the election of 1832, if all the votes had been expunged which were afterwards expunged, and all the votes added which had been previously rejected that were afterwards put on, the result would have been favourable to Whitebank?—I did.

7301. Supposing no alteration made to the roll, or alteration in the qualification of the voters, what would have been the result of the election of 1835?—If the electors at the election of 1835 had only voted, who stood on the register on their original qualification of 1832, I think Mr. Pringle, of Whitebank, would have had a majority of 26.

7302. *Lord Advocate.*] Were not certain properties of electors who voted for Mr. Pringle, of Clifton, purchased before 1835, and new proprietors inrolled on them?—Yes, they were.

7303. How many?—I cannot say.

7304. Was that done with regard to proprietors who had voted for Mr. Pringle, of Whitebank?—It was.

7305. How many?—I cannot state the number.

7306. *Chairman.*] Have you any idea of the numbers?—I have not.

7307. Have you taken that into your consideration in the opinion you have given as to the result of the election of 1835?—Certainly not.

7308. Do you know how many of the supporters of each of the candidates of 1832 were expunged from the roll previously to 1835?—A good many upon both sides; but I cannot state numbers.

7309. I am not quite sure whether I understood you correctly, that only five joint tenants had been put on the Duke of Buccleuch's estate in 1832?—My answer was, in 1832 there were 29 tenants upon the Buccleuch estate, of whom, I think, eight were joint tenants; that in 1836, there were 36 tenants on the Buccleuch estate, of whom 13 were joint tenants.

7310. I think, among your answers, you stated that five joint tenants had been added to the Duke of Buccleuch's estate since 1832?—No.

7311. That there had been more than that, but some had been denuded?—What I stated is, that there were five more joint tenants in 1836, than there were in 1832; of course there had been changes by death and otherwise.

7312. Have you got William Simpson's disposition of life-rent in favour of his brother James Simpson?—Yes, I have; it is dated the 30th day of January 1833.

7313. And appears to have been granted for love, favour and affection?—Yes.

7314. Have you also the disposition of the inn, by James Dunn, in favour of Nicol Milne, John Anderson, Agnes Henderson, and Wilhelmina Henderson, in 1828?—Yes.

7315. Can you judge from that deed, what sort of transaction that is in any way?—That was a joint ownership.

7316. What was the nature of the purchase?—I have no opportunity of judging what it was, except what appears from the deed.

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7317. Were those parties connected with one another?—Not at that time.

7318. Two of them were sisters, were they not?—Yes.

7319. And one of them was married to one of the proprietors?—Not at that time; but by the disposition of these parties in favour of William Wilson, the subsequent proprietor of the inn, it would appear that John Anderson had married Wilhelmina Henderson. By this deed the property of the inn was disponed by Mr. Milne, Mr. and Mrs. Anderson and Mr. Clarkson, (who seems to have married Miss Agnes Henderson,) to Mr. William Wilson, for the price of 2,400 *l.*, of which 720 *l.* seems to have been paid at the time, and the remaining 1,680 *l.* was declared a real burthen on the property.

7320. Have you got the disposition from Mr. Wilson to the 11 proprietors?—I have.

7321. Is that there?—Yes.

7322. What is the date of that?—Twenty-ninth January 1833.

7323. Can you state whether there was any minute of sale regarding that purchase?—I think there was.

7324. Is that in existence at present?—I have not seen it since the deeds were executed.

7325. Have you got another to Mr. Thomas Kemp?—I have.

7326. What is the date of that?—It is dated the 30th and 31st of January 1833.

7327. Have you got a disposition from William Patteson to James Matthewson?—I have.

7328. What is the date of that?—The 30th January 1834.

7329. Have you also a minute of sale?—There is, in the middle of it, a memorandum of sale between William Patteson and Mr. Peter Rodger of the same date.

7330. What are the terms of that minute of sale; does it bear any thing beyond the mere sale of the property?—Mr. Patteson becomes bound to grant a disposition in favour of Mr. Rodger, or any person he may name, and he, Patteson, is to take a lease of the property for five years after Whitsunday, 1835, at the rent of 11 *l.* per annum.

7331. It is in the terms of the arrangement that he is to have a lease back of the premises for five years?—That he is to continue the occupancy of the premises for five years.

7332. In those purchases is that a common arrangement, that the purchaser takes the lease back?—It was generally so, when the sellers were in the actual personal occupancy of the property, because they could not remove till a subsequent term.

7333. I think you have also the titles of the land of Batts?—I have the original disposition by Mr. Rodger in favour of the purchasers, dated the 30th of January 1833, with instrument of seisin proceeding upon it in their favour. I have also the conveyance by Mr. Thomas Smith Cunningham, in favour of Mr. Robert Keith Pringle, of his share of that property.

7334. You have also the lease of the land of Batts?—Yes, likewise the principal leases of these lands between the purchasers and Mr. George Rodger, for 12 years, from Martinmas 1832; that lease is dated the 31st of January, the 6th of February, and the 11th of March 1833. I have also a disposition by George Rodger, of Bridgelands, in favour of Mr. Peter Rodger, of property in Selkirk, occupied by him as chambers, dated the 28th day of January 1833. I have also the disposition by James Ballantyne, in favour of George Scott; that is dated the 21st of June 1833.

7335. Sir *William Rae.*] Where life-renters are enfeoffed, may the tenant be compelled to pay the rent in proportions instead of one sum?—If life-renters are duly enfeoffed on their dispositions, I think the tenant could be compelled to pay the proportion of his rent corresponding to the interest of each life-renter in the property.

7336. Have each of the life-renters all the remedies of the law, whether proprietors or not, against the tenant in possession of the lands, to enforce payment of the portions of the rent?—I conceive that life-renters enfeoffed have all the remedies competent to other proprietors, in consequence of their enfeoffment.

7337. Does your answer apply generally to all life-renters?—No, my answer applies only to such as are enfeoffed on their dispositions, and who are not excluded from interference with the tenants in possession, by having granted back tacks to their author, the person from whom they had obtained the life-rent.

7338. What

7338. What is the effect of an enfeoffment being taken by the holders of these life-rents?—Enfeoffment being taken on a disposition, whether in life-rent or in fee, has the effect of making the right public to the world, and rendering it effectual against all third parties, and indefeasible except by renunciation, which must be recorded in the same register as the previous enfeoffment. A proprietor not enfeoffed, whether a life-renter or fiar, cannot remove tenants.

7339. Can a life-renter exercise all other ordinary acts of administration?—Yes, he can; such as attending at all parochial and district meetings, road trustees, and so on; and he can exercise all the rights of ownership which have not the effect of exhausting the subject; for instance, he cannot work mines and minerals, and he cannot cut old timber; all ordinary burthens also fall upon a life-renter.

7340. Has the objection of nominal and fictitious frequently been taken in the courts, since the Reform Bill passed, and sustained?—The objection of nominal and fictitious has been frequently expressly stated in the schedule of objections on both sides; and wherever the objection has been supported by witnesses, or by oath of the party, it has been admitted as a competent inquiry by the sheriffs in the Registration and Appeal Courts, and effect given to it.

7341. Have you ever succeeded in getting claims rejected on that ground?—I have; and there is another class of cases I may mention; that is, where the widow of a person had the life-interest in the estate, that life-interest has been renounced by deed in order to enable the son to claim, while the widow, perhaps, remained in the personal occupancy of the property, or at all events had the beneficial interest. But in these cases the claimant has been admitted, and in some instances, where the transfer was not *bonâ fide*, the claimant has been rejected, and if it had been necessary to record the renunciation of the widow's life-rent right, I do not conceive it would have been granted.

7342. Does the Reform Act, in your opinion, afford facilities for the creation of nominal and fictitious votes?—I think it does, to a certain extent.

7343. Explain to what extent?—By dispensing with the necessity of making up titles and taking enfeoffments in the case of proprietors, whether as life-renters or as fiars, and by not requiring intimation to the landlord, or some other publication of the right in the case of assignation of long leases of above 57 years' endurance.

7344. As far as regards these points, do you consider fiars and life-renters in the same situation?—In my opinion, there is no difference between them in this respect, seeing that enfeoffment is necessary by the law of Scotland to complete and perfect either of these rights, and, I think, without enfeoffment there can be no security in either case against the creation of what may be called fictitious or colourable votes.

7345. Before the passing of the Reform Act, was there any such thing as making up titles?—No.

7346. Neither in case of life-renter nor fiar?—Enfeoffment was necessary in both cases.

7347. Then you think taking enfeoffments would be the means of correcting the evil?—Yes, I think it would secure the publication of the right and actual delivery of the estate, on which the claim was founded to the claimant; and thus the rights of third parties could not be defeated by collusion between the grantor and grantee; and I do not suppose that any person would place his estate in that hazard, I mean of being attached for the debts of another party, without receiving a *bonâ fide* consideration or full value for it.

7348. The Reform Act affords no security of this description, does it?—It does not; a disposition either in life-rent or in fee, on which no enfeoffment has followed, may be granted to the party in whose favour it is drawn, for the purpose of enabling him to obtain inrolment in the Registration Court; and if after that purpose is served he gives it back to the disponee, who may destroy it at any time, the disponee's creditors would have no means of attaching the subject. If, however, it was discovered that the deed was actually destroyed, then the disponee might be turned off the register, by having an objection lodged against him, as then he would be obliged to produce his title again for the purpose of defeating the objection.

7349. Then the enfeoffment would obviate the first of these objections, would it not?—In my opinion it would. When a disponee is once enfeoffed on his disposition, his creditors cannot be excluded from attaching the property, as it stands in his person, on the face of the titles; and his own right, as well as the right of his creditor and widow, would be protected.

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7350. Would there be any hardship in insisting on the enfeoffment being taken? —I do not think there would; in cases of actual sale it is a safe and necessary precaution, and if the difficulty be increased in cases of a colourable description, so much the better, in my opinion.

7351. Would the expense not be an objection?—I do not think the expense should be an objection, seeing that the enfeoffment protects so many valuable rights independent of the right of inrolment.

7352. Can you tell us what the probable expense of enfeoffment would be upon property affording a qualification?—I think the expense of an enfeoffment on such a property, would be from 4*l.* 10*s.* to 5*l.*

7353. Might not means be formed for diminishing that expense?—I think there might; a measure was introduced into Parliament some years ago, I think by Sir William Rae, which I viewed favourably, but there was much difficulty in the details. I still think it extremely desirable; and if any measure can be devised, having the effect of due publication, it is well worthy of early consideration.

7354. Do any objections occur to you as to the registration of the disposition being held equal to enfeoffment in cases of qualification?—No objection occurs to me at present, that might not be surmounted. By a disposition, rights may be conferred on various parties, and enfeoffments may follow on that deed for one special purpose not embracing all that has carried by the disposition.

7355. Would any inconvenience result from that, in case of a disposition for a qualification to vote?—Certainly not, or in the ordinary case of a disposition, even for the settlement of property.

7356. The mere recording of the disposition would not cost a large sum?—No; the recording of the disposition in the register of seisins could not cost more than the recording of the enfeoffment; and in my estimate of such enfeoffment, I calculate the expense from 12*s.* to 15*s.*

7357. Then the benefits resulting from enfeoffment, as described by you, might be generally obtained for the sum you have now mentioned?—Yes, I think so; I may perhaps add, that if a measure of the kind contemplated was carried into execution, it might allow parties to follow either the present course or the new course, if they thought proper, because all the deeds must go to the same register.

7358. With regard to claims founded on property held under long leases, may the creation of nominal and fictitious votes there as easily take place?—Yes, I think so; perhaps more so than in the case of property.

7359. What remedy would you suggest in that case?—It is very difficult to suggest a specific remedy; but in the case of assignations of long leases, it might be required that intimation should be made for twelve months previously (the statutory period) to the landlord, of all assignations of such leases, and written evidence, by the certificate of the landlord, or his commissioners, indorsed on the deed. But this is attended with difficulty in the detail; the landlord's register not being a public record. This difficulty, however, may be obviated by having such assignations registered in the registry of seisins, or even in the sheriff's records of the district. But I think some remedy is required.

7360. Can you suggest any further security in this case?—Yes, I would require that the price, or other consideration of the assignation, should be set forth in the deed; and if it be in the nature of an annual payment to the cedent, or any other person, or made a burthen on the property assigned, it ought then to form a deduction from the value of the claimant's interest in the subject, before reckoning the qualification.

7361. Such a burthen does not form a deduction at present, according to the Reform Act?—It does not; the words of the ninth section of the statute are rather ambiguous on this point, but they have been so construed by the sheriffs before whom I have practised, who have repeatedly decided that no deduction is to be made from the value of the assignee's interest in the subjects held under a long lease, except the rents payable under the original lease to the landlord, which generally are mere trifles.

7362. Does the statute afford means of creating any nominal and fictitious votes other than those you have now referred to?—Not perhaps in respect of the title; but in respect of value, I consider that the statute opens a wide door for the admission of claims which may be considered bad.

7363. How?—By not requiring any deduction to be made for heritable debts or burthens on the property, or for any thing, in short, except feu-duties or other payments

ments which are made a condition of the right, and which seldom afford any test of the claimant's real interest in the subject.

7364. Then I suppose you would recommend that all real burthens should be deducted in estimating the subjects claimed?—That is a question for the Committee to decide; if I were to suggest at all, I should say, that all real burthens should be deducted before ascertaining the claimant's interest in the property.

7365. Would there not be difficulty in accomplishing that object where the burthen did not appear upon the face of the deed?—If the burthen did not appear on the face of the deed, then the difficulty might perhaps be thrown on the objector, and he might be under the necessity of proving that other burthens did exist before he would be heard in the Registration Court.

7366. Is there any difficulty experienced at present as to the mode of getting at such transactions?—It has been decided by the revising sheriffs, that even although the price should appear a real burthen on the face of the deed, it does not form a deduction from the value; and therefore the inquiries upon this subject have not been very particular.

7367. Is this an evil to a very great extent during your practice?—I have seen many cases in which the price, or the greater part of it, formed a real burthen upon the property; but I can form no correct judgment of the extent of the evil.

7368. Have you seen instances where it appeared that property was conveyed to people having no money, the price of the subject being to form a burthen on the subject conveyed?—I have.

7369. Equal to its amount?—Equal to its amount; I have already, in the course of my evidence, instanced some cases, and I can point out more.

7370. In such cases the voter had no beneficial interest in reality in the subject?—No; the price was sometimes fixed at such an amount that, at an ordinary rate of interest, the interest exhausted the whole rents.

7371. Is there any case of that description which you have not mentioned?—I think there is.

7372. Do you remember the case of Selby?—Ephraim Selby, residing at Minto, claimed in 1834, as a proprietor of a tenement of houses and ground in Selkirk. From the title in his favour, it appeared that he was bound to pay the grantor 25*l.* annually, I think, during her life. An objection was taken, that the annuity in favour of the grantor being a burthen on the property, ought to be deducted; but the sheriff held otherwise, and the claim was admitted.

7373. What is the total annual return on the subject?—Little more than would confer the franchise; from 12*l.* to 15*l.*

7374. Are the means of investigation of such fictitious claims satisfactory under the Reform Act?—All parol proof is competent evidence under the Reform Act.

7375. Does the sheriff restrict you in any respect in point of value?—Certainly not. The 18th section of the Act states, that the sheriff shall hear and receive all competent evidence which either party may produce in support of his claim or objection respectively.

7376. Does he hold the lease as decisive evidence itself, without further evidence to support the value?—I think not, where fraud or collusion is alleged between the parties.

7377. Have any instances occurred in your practice of such an allegation?—Many instances.

7378. In those cases, parole proof of unlimited extent is allowed?—Certainly.

7379. Mr. *Warburton.*] By fraud and collusion, do you mean in withholding or suppressing evidence?—No; what I mean is, where the owner and the tenant made some collusive transaction, in order to have the appearance of enhancing the rent which he was actually going to pay.

7380. May not an allegation of that nature be attached to any disputed case?—Certainly.

7381. So that in the case of every voter, such an allegation may be brought before the Appeal Court?—Certainly; but the written lease is held as evidence in the first instance, unless you set it aside by a charge of fraud and collusion between the tenant and the landlord.

7382. What would be the effect of restricting the Appeal Court to decide only upon the law of the case, the facts being taken as they were produced in evidence before the Registration Court, and no other question to be decided by the Appellant

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lant Court, except in cases of the improper exclusion of evidence by the Registration Court?—I have often considered this subject, but I feel that I am not fully prepared to answer the question. I fear that the proceedings in the Registration Courts would not be thereby facilitated, and if there were to be an appellant jurisdiction upon points of law, perhaps it would be satisfactory if it were of a nature that would fix all disputed points, so as to regulate the proceedings in Registration Courts all over Scotland.

7383. To have uniformity of decision?—Yes, and thereby to secure uniformity of decision.

7384. Sir *William Rae.*] Will it not be necessary for such a purpose, that a record should be kept of the proceedings and evidence in the first decision of the question?—Yes, and that is the reason I am induced to say that this plan would not facilitate the proceeding in the Registration Court.

7385. Mr. *Warburton.*] In such cases, where parties determine on an appeal, suppose they were required to give notice of appeal, within a certain number of days, of the decision in the Registration Court, and that then the registering sheriff should sign a statement of facts to be laid before him and agreed to by the parties; would not that obviate the necessity of recording the evidence given in all cases?—By the present Act a party appealing is bound to give notice within so many days, but I fear that the adjustment of the statement of facts to be certified by the sheriff in the manner stated in the question, would create more discussion, and occupy more time than would be occupied by the sheriff's taking a note of the facts at the time. At present there is no record of proceedings in Registration Courts admitted, the sheriff being merely directed to take a note of the statement of facts, and of the pleas founded on, and the names and designations of the witnesses, to which he is to affix his signature, as well as to the deeds, writings and other documents produced by the parties in support of their claim and objections.

7386. Sir *William Rae.*] If the sheriff was enjoined to take a note of the evidence in a book to be kept by him in each case, might not a copy of that evidence afford sufficient materials for deciding the point of law, without the inconvenience to which you think in other cases the parties would be liable?—Yes, I think that would remedy the difficulty about agreeing on a case.

7387. A copy of that evidence, together with the documents produced before the sheriff, would put the Appellant Court precisely in the same situation, in point of information of the case, as the sheriff himself?—With one exception, in Scotland, the registering sheriff is a member of the Appellant Court, and if he took his notes fully of the evidence, I think he could communicate that evidence sufficiently to the appellant jurisdiction to enable them to dispose of any point of law.

7388. At present, after a witness is examined by the sheriff, he remains in court while other witnesses are in examination?—After his examination he may remain in court.

7389. And he may hear other witnesses examined, and hear the statement of counsel commenting on his own evidence, and then, after all that has taken place, he is again examined anew before the Appellant Court?—He is.

7390. And has it often occurred in your experience that he gave a different account in the Appellant Court to what he gave in the other court?—Certainly, a different account, and I have often thought that that plan of proceeding did not tend to the attainment of the ends of justice.

7391. Mr. *Warburton.*] Could you exclude parties after they have been examined without materially interfering with the publicity of such courts?—I think we have no power of excluding by our practice, after a witness has been examined.

7392. Sir *William Rae.*] The common mode of evidence is by reference to oath?—It is.

7393. Do you think that an expedient mode of proof?—I have always doubted the power of the sheriffs under the statute to administer the oath of reference, and in some instances, in Scotland, I know that the tender of reference has been made very much with a view of annoyance, and parties are tendered when it was known they could not be present.

7394. What remedy do you propose for that evil?—The remedy I have always insisted on under the law as it stands, is, that a party should be cited under a regular warrant. The sheriffs and the Appeal Court have granted such warrants for

for citation, and then, when the party after citation did not appear, he was held as confessed, and his claim was rejected.

7395. Then all you consider requisite is that the Act should authorize that course of proceeding?—I think that there should be every possible facility given to the ascertainment of the truth on all claims of registration.

7396. Do they limit the subject of examination in any way on reference to oath?—No, they do not; but if a question which exhausts the reference is put in the first instance, then the sheriffs, as I understand is the rule in Civil Courts, have held that after the fair subject of the reference is exhausted by an answer from the claimant in the affirmative, it is then too late to enter into collateral inquiries.

7397. Give us an instance of that?—Yes; I may instance the case of Young, the joint tenant, where the questions were put to him—was he joint tenant of such a farm? was he in the actual personal occupancy? did he pay a rent, his share of which corresponded with 50 *l.*?—and as these questions, after being answered in the affirmative, exhausted the reference, then it was held to be incompetent to go into collateral inquiries on the reference to his oath.

7398. If they had commenced with those collateral inquiries, could they have been gone into first, and then the general questions put afterwards?—Certainly.

7399. That is the rule observed in the courts?—That is the rule acted on in the courts where I have practised in several instances.

7400. Is not that rule calculated to exclude the full inquiry of the truth?—I think not, because if you begin with your collateral inquiries you may carry them to any extent you think proper, before you put the questions which do actually exhaust the reference.

7401. In the case of these collateral inquiries being put first, would that not tend to qualify the general answer made afterwards?—If any thing suspicious came out in the course of those collateral inquiries, of course the sheriff would take the whole oath of reference into consideration when he was judging of the effect of that oath.

7402. Then is it wise by the fixed course of proceeding to exclude those inquiries?—I do not think it wise for the objector so to conduct his case as to exclude himself from the collateral inquiries, by having put the special questions which exhaust the reference.

7403. Ought any mode of putting questions to exclude the judge from investigating, in any manner he thought proper, the truth of the case?—Certainly not.

7404. Do you think that the statute furnishes any facilities with regard to the creation of nominal and fictitious votes in the case of agricultural tenants?—I do not think so.

7405. Explain why?—It appears to me that the provisions of this statute with regard to the 50 *l.* tenancies, which are the agricultural leases, are guardedly framed, and that they do not afford the means of introducing nominal and fictitious voters under that Act of Parliament; from the 9th section of the statute containing five separate and distinct qualifications of tenants, it may appear rather confused, but in the case of agricultural tenancy on the 50 *l.* qualification, the statute requires that a tenant shall be in the actual personal occupancy of the farm on which he claims, and that, with the payment of a rent of 50 *l.*, is the only test; it is necessary for the claimant under this clause of the statute to prove, first, that he is liable for the rent to the landlord, and, secondly, that he is in actual personal occupancy.

7406. In general, that description of tenancy is confined to the near relations of the family, is it not?—In general, it is.

7407. Under occupancy, what do you embrace; is it necessary that a man should actually reside on a farm, or is it sufficient that he occupies it by his servants?—Residence is not required, but occupancy by his servants is indispensable.

7408. In Selkirkshire there are a great many led farms?—In the upper part of Selkirkshire there are a great many led farms.

7409. Describe more fully what they are?—By led farm I mean a farm where none of the tenants reside; in that part of the county they are exclusively sheep or grazing farms; the tenants generally reside in districts where they have agricultural farms; and their object in having a led farm generally is for the purpose of rearing stock to be brought down to their low country farms to be fed off; and this practice is becoming now very general in the North of Scotland.

7410. Actual residence would not be expected, or ought not to be imposed?—I think not; I do not think it is the principle of the statute.

Mr. Donald Horne.

16 March 1837.

7411. You said something about five descriptions of tenants?—In the ninth section there are five different qualifications of tenants: First, a tenant for a period of not less than 57 years, exclusive of breaks; second, a tenant for the life-time of the tenant (in these two qualifications the test is "where the clear yearly value of such tenant's *interest* is not less than 10*l.*"); third, a tenant for a period not less than 19 years, where the clear yearly value of his *interest* is not less than 50*l.*; the fourth qualification is where the tenant shall, for a period of 12 months, have been in the actual personal occupancy of any such subjects where the yearly rent is not less than 50*l.* (in this qualification there is nothing said of *interest*); and the fifth qualification is, where the tenant, whatever the rent may be, has truly paid for his interest in the subject a price grassum, or consideration of not less than 300*l.*

7412. These different qualifications are all embraced in one clause?—They are all embraced in the ninth section of the statute.

7413. Has that led to considerable confusion?—In practice it has led to a considerable confusion, which is not yet got the better of, particularly when parties prepare and lodge their own claims.

7414. A year's possession is necessary in all those cases to enable a tenant to claim?—The ordinary term of entry of farms in Scotland is Whitsunday, and therefore a tenant under the 50*l.* qualification must be fifteen months in possession of the farm before he can lodge his claim of registration.

7415. May he be longer in any case?—Yes, and I think it rather a hard case; I will state it: Suppose a tenant to take a farm, rented at 100*l.* or 150*l.* a year; he enters on it, say at Whitsunday 1834, as to the houses and grass, and the lands under crop, after the in-gathering of that year's crop by the way-going tenant; when July 1835 arrives (the period for lodging the claim), he has not been in possession for twelve months of so much of the farm as would correspond to 50*l.* of the rent agreed to be paid by him, and therefore he cannot be registered until August 1836, being a period of two years and three months after he has entered into possession, and before that time he will, according to the ordinary terms of payment in Scotland, have paid two years' rent.

7416. Is the case you have now described a very unusual or a very common case?—It is a common case in small farms, but in counties where the farms are large it is not so common; and I think that this case requires a remedy.

7417. In this case there is more time to ascertain whether there is any thing nominal and fictitious in the grant, I presume?—Of course there is.

7418. *Lord Advocate.*] Are you aware of many properties having been possessed for a great course of years, by heirs apparent, and disponees without enfeoffment?—I am aware of it in several instances.

7419. Both large and small properties?—Both, chiefly the small, I should think; I am aware of one instance in the county of Selkirk, of a gentleman who was upon the roll, a person of the name of Tudhope; he succeeded to his father in certain properties, and did not complete his title. His own son went to America; the father executed settlements, excluding the son as heir, but the son returned, and because the father was not enfeoffed, he set aside the settlement, made up a title to the property himself, and sold it.

7420. Are you not aware that in cases that come before the court, that is very often the case?—I am speaking here of proceedings in the Registration Court.

7421. The question I put was, whether that was not very common long before the Reform Act was passed?—I think it is common, and yet, at the same time, I think it is dangerous.

7422. Have opposite judgments been pronounced by the sheriffs in the Appeal Courts, in the different counties?—I understand so generally, and I have been anxiously looking for a publication which has been promised from one of the judges, but it has not yet made its appearance.

7423. Mr. *Warburton.*] Is it any work in which the contradictory decisions of the Appeal Court have been collected?—That is the work I look for; there is a small essay in a periodical lately published at Edinburgh on the subject.

APPENDIX.

—No. 1.—

SELKIRKSHIRE.

LIFE-RENT TABLES.

TABLE showing the whole Number of SINGLE LIFE-RENTS and of JOINT LIFE-RENTS enrolled in each of the Years 1832, 1833, 1834, 1835 and 1836, in the County of *Selkirk*, with the Names and Descriptions and Places of Residence of the respective Names of Granters, Holders of such Life-rents, and the nature of the Right constituting the same. Appendix, No. 1.

No.	NAMES AND DESIGNATIONS.	Nature of Right.	GRANTERS.	Resident.	Non-resident.
	1832.—SINGLE LIFE-RENTS.				
1	Rev. John Campbell, minister of Selkirk parish.	office -	Duke of Roxburgh	1	
2	Rev. James Henderson, Secession, Galashiels	ditto -	congregation -	1	
3	Rev. Alexander Nivison, minister of Roberton parish.	ditto -	- - - -	1	
4	James S. Nicoll, schoolmaster of Yarrow parish.	ditto -	heritors - -	1	
5	Rev. N. Paterson, minister of Galashiels parish.	ditto -	Scott, of Gala -	1	
6	Rev. Dr. Russel, minister of Yarrow parish	ditto -	Crown - -	1	
7	Rev. James Smith, minister of Ettrick parish	ditto -	Lord Napier -	1	
8	William Tait, schoolmaster of Ettrick parish	ditto -	heritors - -	1	
				8	
9, 10, 11	David Knox, Wooller; James Chisholm, Selkirk; George Dobson, Selkirk.	marriage	- - - -	3	
				11	
	Note.—No. 9, 10 and 11 were husbands of life-rentrixes.				
	JOINT LIFE-RENTS. None.				
	Total enrolled - - 11 „ Resident - - 10 „ Non-resident - 1 Majority of Resident - 9				
	1833.—SINGLE LIFE-RENTS.				
9	James Simpson, Fauldshope - - -	grant -	William Simson -	1	
	JOINT LIFE-RENTS. None.				
	Total enrolled - - 1 „ Resident - - 1 „ Non-resident - - Majority resident - - 1				
	1834.—SINGLE LIFE-RENTS.				
10	Robert Fyshe, schoolmaster of Galashiels parish.	office -	heritors - -	1	
11	Charles Baillie, advocate, Edinburgh - -	grant -	Lord Polworth -	- -	1
12	Walter Grieve, Brownmuir - - -	ditto -	Andrew Lang and another.	1	
13	*James Hogg, Altrive, life-renter by lease -	ditto -	Duke of Buccleuch	1	
14	James Cameron, Selkirk - - - -	ditto -	F. Anderson, &c.	1	
	Carried forward - - -	- -	- - - -	4	1

Appendix, No. 1.

No.	NAMES AND DESIGNATIONS.	Nature of Right.	GRANTERS.	Resident.	Non-resident.
	Brought forward - - -	- -	- - - - -	4	1
	JOINT LIFE-RENTS.				
15	John Grainger, factor to Marquis of Lothian	grant -	Henderson's trustees.	- -	1
16	John Mair Grainger, London - - -	ditto -	father - -	- -	1
17	Alexander Macdonald, Edinburgh - -	ditto -	father - -	- -	1
18	Rev. P. Bradley, Lilliesleaf - - -	ditto -	Archibald Douglas	- -	1
19	Sir Thomas M'Dougal, Brisbane, bart., Mackerston.	ditto -	- ditto - -	- -	1
20	Colonel O'Reilly, Floors - - - -	ditto -	- ditto - -	- -	1
21	John Tulloch, of Arthurshiel - - -	ditto -	- ditto - -	- -	1
	Total enrolled - - 12 „ Resident - 4 „ Non-resident 8 Majority Non-resident - 4			4	8
	1835.—SINGLE LIFE-RENTS.				
22	George Brockie, farmer, Bowshank - -	grant -	brother - -	- -	1
23	Robert Ballantyne, currier, Selkirk - -	ditto -	nephew - -	1	
24	Francis Ballantyne, merchant, Hawick -	ditto -	John Gray -	- -	1
25	Robert Fraser - ditto - ditto	ditto -	William Muir -	- -	1
26	Charles Williamson ditto - ditto -	ditto -	John Robertson	- -	1
27	Walter Wilson, manufacturer ditto -	ditto -	John Blackhall -	- -	1
28	Right. hon. Lord Melgund - - -	ditto -	Earl of Minto -	- -	1
29	James Robertson, Glasgow - - -	ditto -	William Hynd -	- -	1
30	* Sir Walter Scott, of Abbotsford - -	ditto -	Scott, of Gala -	- -	1
	Note.—Sir Walter is enrolled as "Tenant;" but his qualification was a right *for his life-time* to a long lease, and so, by title, he is a life-renter, or life-rent tenant.				
	JOINT LIFE-RENTS.				
31	Henry Ewen, Hawick - - - -	grant -	J. & W. Haldane	- -	1
32	Captain Russell Elliot, Langlee - -	ditto -	Archibald Douglas	- -	1
33	John Wilson, Hawick - - - -	ditto -	J. & W. Haldane	- -	1
34	Alexander Robertson, Selkirk - - -	ditto -	John Robertson	1	
	Total enrolled - - 13 „ Resident - 2 „ Non-resident 11 Majority Non-resident - 9			2	11
	1836.—SINGLE LIFE-RENTS.				
35	Thomas Anderson, schoolmaster of Roberton parish.	office -	heritors - -	1	1
36	Charles B. Scott, W.S., Edinburgh - -	grant -	Mr. Kerr - -	- -	1
37	Thomas Blackhall, Selkirk - - -	ditto -	brother - -	1	
38	Sir John M. Naysmith, of Posso, bart. -	ditto -	Mrs. Veitch -	- -	1
39	John Paterson, merchant, Peebles - -	ditto -	Andrew Kerr -	- -	1
	JOINT LIFE-RENTS.			3	2
40	1. James Pringle, younger, of Stichill -	grant -	- - -	- -	1
41	2. Norman Pringle, residing in Edinburgh -	ditto -	Sir J. Pringle.	- -	1
42	3. James Nairn, W. S. - ditto -	ditto -		- -	1
43	4. Charles Nairn, W. S. - ditto -	ditto -	- - -	- -	1
44	1. John Inglis, advocate - ditto -	ditto -	- - -	- -	1
45	2. John M'Kenzie, accountant ditto -	ditto -	- - -	- -	1
46	3. William Forbes M'Kenzie, of Portmore	ditto -	Walker of Bowland.	- -	1
47	4. Right hon. Lord Ramsay - - -	ditto -		- -	1
48	5. George Thomson, of Burnhouse, Edinburgh.	ditto -	- - -	- -	1
49	6. William Forbes, advocate, Edinburgh -	ditto -	- - -	- -	1
	Carried forward - - -	- -	- - - -	2	13

* Nos. 13 and 30 are the only life-renters *by lease*. The others are all by feudal grants.

No.	NAMES AND DESIGNATIONS.	Nature of Right.	GRANTERS.	Resident.	Non-resident.
	1836.—Joint Life-rents - - - - - Brought forward - -			2	13
50	1. John Bothwick of Crookston - -	grant -	- - -	- -	1
51	2. Rev. J. Isaac Berisford, Macbichell -	ditto -	- - -	- -	1
52	3. John Scott of Ravenswood - -	ditto -	- - -	- -	1
53	4. James Erskine, writer, Melrose - -	ditto -	- - -	- -	1
55	5. George Pott, ensign, 3d Regiment Native Infantry, Bengal.	ditto -	- - - Major Pott.	- -	1
56	6. Lieut. David Pott, 47th Regiment ditto	ditto -	- - -	- -	1
57	7. Lieut. Stephen Pott, E. I. C. Engineers, Cawnpore.	ditto -	- - -	- -	1
58	8. George Pott Erskine, ensign, 72d Regiment Foot, Londonderry.	ditto -	- - -	- -	1
59	John James M'Donald, Powderhall -	ditto -	father - -	- -	1
60	1. Thomas Forrest, Commieston - -	ditto -	ditto - -	- -	1
61	2. George Wilson, Hawick - - -	ditto -	Mr. Forrest -	- -	1
62	1. James Anderson, Edinburgh - -	ditto -	Pringle of Clifton	- -	1
63	2. Rev. Archibald Baird, Paisley - -	ditto -	ditto - -	- -	1
64	1. Samuel Hay, merchant, Havre - -	ditto -	- - -	- -	1
65	2. Lieut.-Colonel Charles Hay, Coldstream Guards.	ditto -	Sir John Hay	- -	1
66	3. Adam Hay, banker, Edinburgh - -	ditto -	- - -	- -	1
67	1. Dr. Walter Adam, Edinburgh - -	ditto -	- - -	- -	1
68	2. James Anderson, merchant, Edinburgh	ditto -	- - -	- -	1
69	3. Adam Black, merchant, Edinburgh -	ditto -	- - -	- -	1
70	4. George Dalziel, W. S., Edinburgh -	ditto -	Pringle of Clifton	- -	1
71	5. J. B. Gracie, W. S., Edinburgh - -	ditto -		- -	1
72	6. Maurice Lothian, solicitor, Edinburgh	ditto -	- - -	- -	1
73	7. John Lothian, solicitor, Edinburgh -	ditto -	- - -	- -	1
74	8. John W. M'Kenzie, W. S., Edinburgh -	ditto -	- - -	- -	1
75	1. Peter Crooks, W. S., Edinburgh -	ditto -	- - -	- -	1
76	2. James Spittal, merchant, Edinburgh -	ditto -	- - -	- -	1
77	3. Andrew Miller, merchant, Edinburgh -	ditto -	- - -	- -	1
78	4. W. Wemyss, Dep. Com. Gen. Edinburgh	ditto -	- - -	- -	1
79	5. Andrew Ewen, Jedburgh, Edinburgh -	ditto -	Pringle of Clifton	- -	1
80	6. John Goodfellow, baker, Hawick -	ditto -		- -	1
81	7. William Goodfellow, merchant, Hawick	ditto -	- - -	- -	1
82	8. John Hislop, merchant, Hawick - -	ditto -	- - -	- -	1
83	9. Peter Wilson, manufacturer, Hawick -	ditto -	- - -	- -	1
84	10. Walter Wilson, baker, Hawick - -	ditto -	- - -	- -	1
85	1. Robert Dundas, of Arniston - -	ditto -	- - -	- -	1
86	2. John David Hope, wine-merchant, Leith	ditto -	Pringle of White-	- -	1
87	3. James Robertson, W. S., Edinburgh -	ditto -	bank.	- -	1
88	4. George Bell, merchant, Leith - -	ditto -	- - -	- -	1
89	5.—1. Robert Brodie, tenant, Bedrule -	ditto -	- - -	- -	1
90	6.—2. J. S. Elliot, farmer, Gilliestongues	ditto -	- - -	- -	1
91	7.—3. Robert Laing, writer, Jedburgh -	ditto -	- - -	- -	1
92	8.—4. Andrew W. Mein, skinner, Jedburgh	ditto -	- - -	- -	1
93	9.—5. W. Rutherford, writer, Galashiels -	ditto -	Pringle of White-	- -	1
94	10.—6. J. Rutherford, merchant, Jedburgh	ditto -	bank.	- -	1
95	11.—7. Robert Rutherford, writer, Jedburgh	ditto -	- - -	- -	1
96	12.—8. John Scott, tenant, Boughtrig -	ditto -	- - -	- -	1
97	13.—9. Simon Scott, writer, Jedburgh -	ditto -	- - -	- -	1
98	14.—10. David Brown of Rawflat - -	ditto -	- - -	- -	1
99	15.—1. W. Ballantyne, nurseryman, Dalkeith	ditto -	- - -	- -	1
100	16.—2. John Ballantyne, ditto - ditto -	ditto -	- - -	- -	1
101	17.—3. Robert Currie, writer, Kelso -	ditto -	- - -	- -	1
102	18.—4. George Elliot, merchant, Dalkeith -	ditto -	- - -	- -	1
103	19.—5. George Jardan, writer, Kelso -	ditto -	- - -	- -	1
104	20.—6. James Morrison, physician, Dalkeith	ditto -	- - -	- -	1
105	21.—7. John Scott Moncrieff, accountant, Edinburgh.	ditto -	- - -	- -	1
106	22.—8. Alexander Brodie Park, farmer, Bankhead.	ditto -	Pringle of White-bank.	- -	1
107	23.—9. John Park, farmer, Wester Wooden	ditto -	- - -	- -	1
108	24.—10. John Paterson, bank agent, Dalkeith.	ditto -	- - -	- -	1
109	25.—11. James Primrose, writer, Edinburgh	ditto -	- - -	- -	1
110	26.—12. Alexander Rae, merchant, Dalkeith.	ditto -	- - -	- -	1
111	27.—13. John Rutherford, merchant, Kelso	ditto -	- - -	- -	1
112	28.—14. Charles Robson, tenant, Lurdenlaw	ditto -	- - -	- -	1
	Carried forward - - -	- -	- - -	2	75

Appendix, No. 1.

No.	NAMES AND DESIGNATIONS.	Nature of Right.	GRANTERS.	Resident.	Non-resident.
	1836.—JOINT LIFE-RENTS - - -	- -	Brought forward	2	75
113	29.—15. John Smith, writer, Kelso - -	grant -	- - -	- -	1
114	30.—16. Robert Swan, writer, Kelso -	ditto -	- - -	- -	1
115	31.—17. Walter Simpson, saddler, Dalkeith	ditto -	Pringle of Whitebank.	- -	1
116	32.—18. Patrick Wilson, writer, Kelso -	ditto -		- -	1
117	33.—19. John Williamson, Newton Grange	ditto -	- - -	- -	1
118	34.—20. William Williamson, of Laritbure	ditto -	- - -	- -	1
119	35.— 1. Andrew Dickson, of Alton - -	ditto -	- - -	- -	1
120	36.— 2. Wm Nixon, manufacturer, Hawick	ditto -	- - -	- -	1
121	37.— 3. William Ritchardson, nurseryman, Edinburgh.	ditto -	- - -	- -	1
122	38.— 4. James Smail, of Catshawhill -	ditto -	Pringle of Whitebank.	- -	1
123	39.— 5. William A. Smail, of Oversrains -	ditto -	- - -	- -	1
124	40.— 6. John Elliot, tenant, Banks - -	ditto -	- - -	- -	1
125	41.— 7. Thomas Scott, tenant, Milsington	ditto -	- - -	- -	1
				3	87

Total enrolled - -		90
„ Resident -	3	
„ Non-resident -	87	
Majority non-resident	84	

Note.—George Brockie (No. 22) is life-renter of *half* of a property belonging to his brother, but that is not held to make him a joint life-renter, there being no other life-renter enrolled on the other half of the property. The same remark applies to Sir J. M. Naysmith (No. 38).

ABSTRACT:

I. LIFE-RENTERS by Office and Marriage.			LIFE-RENTERS by Grant.									
			TORIES.				WHIGS.				Total Tories.	Total Whigs.
Year of Enrolment.	Tories.	Whigs.	Single.	Joint.	Resident.	Non-resident.	Single.	Joint.	Resident.	Non-resident.		
1832 -	6	5	–	–	–	–	–	–	–	–	–	–
1833 -	- -	- -	1	–	- -	1	- -	–	- -	- -	1	–
1834 -	- -	1	3	3	2	4	1	4	1	4	6	5
1835 -	- -	- -	2	–	- -	2	7	4	2	9	2	11
1836 -	1	- -	1	63	2	63	3	20	1	24	64	25
TOTAL	7	6*	7	66	4	70	11	28	4	37	73	41

* *N. B.*—Of the 13 life-renters by office and marriage, only *one* was non-resident.

Adam Paterson.

Appendix, No. 2.

— No. 2. —

JOINT PROPRIETORS, SELKIRKSHIRE.

TORIES.			WHIGS.		
ENROLLED in 1832:			ENROLLED in 1832:		
James Cameron, Selkirk - - -	2	2	John Haldane, Selkirk - - -	2	2
Alexander Cameron, Dundee - -			Walter S. Haldane, ditto - -		
1833:			1833:		
			None.		
Edwd Pyper, mail-coach contractor, Edinburgh - - - - -			1834:		
Adam Urquhart, advocate, Edinburgh					
Charles Neaves, ditto - ditto -					
Robert Scott Moncrieff, Dalkeith -					
John Chisholm, of Stirches, Hawick -	10		Robert Edmond, Selkirk - -	2	
Gilbert Laurie Finlay, W.S., Edinburgh			Robert Edward, jun., ditto - -		
W. Scott, W. S. - - ditto -			George Edmond, Selkirk - -	2	
John Scott, W. S. - ditto -			Robert Edmond, Craig - -		
Robert Whigham, advocate, ditto -			Walter Shortreed, Selkirk - -	2	
George Potts, writer, Hawick - -			William Shortreed, ditto - -		
James Curle, writer, Melrose; James Erskine, Melrose; Donald Horne, W. S., Edinburgh; J. S. Cunningham, W. S., Edinburgh; Donald Smith, banker, Edinburgh - -	5		Alexander Tudhope, Melrose - -	2	
			Henry Cunningham, Gallowside -		
			George Main, writer, Kelso - -	2	
			John Mason, distiller, ditto - -		
		15	William Currie, of Linthill - -	2	
1834:			John Richardson, London - -		
			James Gray, Selkirk - - -	1	
Henry Burn, W. S., Edinburgh -			Sir William Scott, of Ancrum -	2	
Alexander Thomson, W. S., ditto -			Sir D. K. Sandford - - -		
Francis Anderson - - - ditto -	5		James Elliot, of Wolflee - -	3	
Walter Jollie, W. S. - - - ditto -			Archibald Jardon, Boreydward -		
John Brown, writer - - - ditto -			William Rutherford, junior, writer, Jedburgh - - - - -		
David Dundas, younger, of Beechwood, Edinburgh - - -			John Murray, of Uplaw - -	3	
Archibald Hope, younger, of Pinkie -			Andrew Murray, junior, advocate -		
W. James Fraser, Allarley, Melrose -	6		Alexander Kay, of Charlesfield -		
George Baillie, younger, of Jerviswood			Robert Weir, surgeon, Galashiels -	6	
Thomas Tod, of Drygrange - -			William Weir, ditto - ditto -		
Archibald Tod, Liverpool - -			Thos Davidson, manufacturer, ditto		
Sir W. H. P. Campbell, of Marchmont - - - - - - -			Francis Inglis - ditto - ditto		
John Spottiswood, Esq. of Spottiswood			John Inglis - ditto - ditto		
John Spottiswood, younger, ditto -	5		James Inglis - ditto - ditto		
Andrew Spottiswood - - -					27
George Spottiswood, of Gladswood -			1835:		
Thomas Scott, of Riccalton - -	2				
John Scott Pell - - - -			Rev. G. Lawson, Kilmarnock -	1	
Colonel Macdonald, Powderhall -	1		Richard Robertson, London - -	2	
William Fair, Esq., of Langlee, banker, Jedburgh - - - - -	2		William Robertson, ditto - -		
John Elliot Shortreed, ditto - -			Alexander Mercer, Selkirk - -	2	
Alexander Douglas, W. S., Edinburgh	2		William Mercer - ditto - -		
Christopher Douglas - - ditto -			Robert Bell, advocate - - -	4	
W. M. Boyd, W. S. - - ditto -	1		William Bell, W. S. - - -		
Robert Anderson, writer, Hawick -			Benjamin W. Bell, W. S. - -		
George Oliver, ditto - ditto -	3		Benjamin Robert Bell, advocate -		
John Oliver, jun., farmer, Stitchelhill			Sir David Erskine - - -	1	
James Jardine, Arkleton - - -	2		William Brokie, Selkirk - -	1	
Elliot Armstrong Rickarby - -			William Muir - ditto - - -	1	
R. K. Pringle, Bombay, Civil Service -	1		William Ballantine, ditto - -	1	
		30	John Robertson, ditto - - -	1	
1835:					14
Thomas Bruce, of Langlee, Edinburgh	2	2	1836:		
Robert Bruce, advocate, ditto - -					
1836:			John Blackhall, Selkirk - - -	1	
			George Elliot, junior, London -	2	
James Grieve, Branxholm-braes -	2		Captain George Elliot, London -		
William Grieve, Liverpool - -			Gilbert Elliot, Greenwells - -	1	
Viscount Maitland - - -	2		Robert Henderson, Bewliehill -	1	
Sir Anthony Maitland - - -			J. Douglas Dove, London - -	1	
Charles Scott, Milsington - -	1				6
		5			
		54			49

Adam Paterson.

— No. 3. —

JOINT TENANTS, Selkirkshire.

No.	NAMES.	PROPRIETOR of ESTATE.	Original Tenants.	Before or after 1832.	Tenants by Deed of Assignation or Transfer.	Before or after 1832.	Agricultural Tenants.	Tenants not Agricultural.	Resident.	Non-resident.
	1832:									
1	Robert Simson, farmer, Fauldshope -	Duke of Buccleuch	1	before-	- -	- -	1	–	1	–
2	Adam Scott, farmer, Gilmansclough -	- ditto - -	1	ditto -	- -	- -	1	–	1	–
3	James Scott, ditto - ditto - -	- ditto - -	1	ditto -	- -	- -	1	–	1	–
4	Walter Johnston, farmer, Capelgill -	Mr. Pott - -	1	ditto -	- -	- -	1	–	–	1
5	William Brown - ditto Cauldholm -	- ditto - -	1	ditto -	- -	- -	1	–	–	1
6	John Pagan - - ditto Polburn -	- ditto - -	1	ditto -	- -	- -	1	–	1	–
7	James Brydon, Kenilhead - - -	Duke of Buccleuch	1	ditto -	- -	- -	1	–	–	1
8	James Brydon, Moodlaw - - -	- ditto - -	1	ditto -	- -	- -	1	–	–	1
9	James Blyth, Borthwickshiels - -	Major Pott -	1	ditto -	- -	- -	1	–	1	–
10	Walter Blyth - ditto - - -	- ditto - -	1	ditto -	- -	- -	1	–	1	–
11	James Burnet, Ballandear - - -	Duke of Buccleuch	1	ditto -	- -	- -	1	–	1	–
12	Robert Burnet - ditto - - - -	- ditto - -	1	ditto -	- -	- -	1	–	1	–
13	David Thomson, manufacturer, Aclington Park.	Scott, of Gala -	1	ditto -	- -	- -	–	1	–	1
14	James Bathgate, manufacturer, Galashiels.	- ditto - -	1	ditto -	- -	- -	–	1	1	–
15	John Roberts, manufacturer, Galashiels -	- ditto - -	1	ditto -	- -	- -	–	1	1	–
16	George Roberts - ditto - - ditto -	- ditto - -	1	ditto -	- -	- -	–	1	1	–
17	George Paterson - ditto - - ditto -	- ditto - -	1	ditto -	- -	- -	–	1	1	–
18	Charles Robson, draper, Berwick - -	- ditto - -	–	- -	transfer -	before	–	1	–	1
19	James Sime, senior, manufacturer, Galashiels.	- ditto - -	1	ditto -	- -	- -	–	1	1	–
20	William Brown, manufacturer, Galashiels	- ditto - -	1	ditto -	- -	- -	–	1	1	–
21	Walter Cochrane - ditto - - ditto -	- ditto - -	–	- -	transfer -	before	–	1	1	–
22	John Cochrane - - ditto - - ditto -	- ditto - -	–	- -	- ditto -	ditto	–	1	1	–
23	Archibald Cochrane ditto - - ditto -	- ditto - -	–	- -	- ditto -	ditto	–	1	1	–
24	John Lees, merchant, Edinburgh - -	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
25	Thomas Lees, writer, Musselburgh -	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
26	Robert Lees, manufacturer, Galashiels -	- ditto - -	1	before -	- -	- -	–	1	1	–
27	George Lees - ditto - - ditto -	- ditto - -	1	ditto -	- -	- -	–	1	1	–
28	Robert Gill - ditto - - ditto -	- ditto - -	–	- -	transfer -	before	–	1	1	–
29	Henry Sanderson ditto - - ditto -	- ditto - -	–	- -	- ditto -	ditto	–	1	1	–
30	Thomas Paterson, farmer, Helmburn -	Johnston, of Alva	1	before -	- -	- -	1	–	1	–
31	John Paterson - ditto - ditto -	- ditto - -	1	ditto -	- -	- -	1	–	1	–
32	William Hall - ditto Crosslea -	Walker, of Bowland	1	ditto -	- -	- -	1	–	1	–
33	Thomas Hall - ditto - ditto -	- ditto - -	1	ditto -	- -	- -	1	–	1	–
	1833:									
34	William Simson, farmer, Fauldshope -	Duke of Buccleuch	1	before -	- -	- -	1	–	1	–
*35	James Stoddart, Newburgh - - -	- ditto - -	1	ditto -	- -	- -	1	–	1	–
36	James Paterson, farmer, Whitehillshiell -	Rutherford, of Redford Green.	–	- -	assumption	after	1	–	1	–
37	Robert Brydon, Redfordgreen - -		–	- -	- ditto -	ditto	1	–	1	–
*38	George Blaikie, farmer, Muirhouse -	Scott, of Gala -	–	- -	transfer -	before	–	1	–	1
*39	William Aitchison, Linhope - -	Duke of Buccleuch	1	before -	- -	- -	1	–	–	1
40	Alexander Sanderson, manufacturer, Galashiels.	Scott, of Gala -	1	ditto -	- -	- -	–	1	1	–
*41	William Young, Whitebank - - -	Pringle, of Whitebank.	1	ditto -	- -	- -	1	–	1	–
*42	William Moffat, Galwald - - -	Duke of Buccleuch	1	ditto -	- -	- -	1	–	–	1
	Carried forward - - -	- - - -	30	- -	- -	- -	23	19	31	11

No.	NAMES.	PROPRIETOR of ESTATE.	Original Tenants.	Before or after 1832.	Tenants by Deed of Assignation or Transfer.	Before or after 1832.	Agricultural Tenants.	Tenants not Agricultural.	Resident.	Non-resident.
	1834:	Brought forward -	30	- -	- -	- -	23	19	31	11
43	Robert Gibson, residing at Shaws - -	Duke of Buccleuch	–	- -	assumption	after	1	–	1	–
*44	Thomas Mitchell, innkeeper, Selkirk -	A. Urquhart and others.	1	before	- -	- -	–	1	1	–
45	Thomas Mitchell, jun., innkeeper, Selkirk	- ditto - -	–	- -	assumption	after	–	1	1	–
*46	John Anderson, Braidgorhill - -	Williamson, of Maxton.	1	before	- -	- -	1	–	1	–
47	William Aitcheson, jun., farmer, Menzion	Duke of Buccleuch	–	- -	assumption	after	1	–	–	1
48	George Aitchison, Linhope - - -	- ditto - -	–	- -	- ditto -	ditto	1	–	–	1
49	Thomas Ballantyne, residing in Edinburgh	- ditto - -	–	- -	- ditto -	ditto	1	–	–	1
50	James Stoddart, jun., farmer, Newburgh	- ditto - -	–	- -	- ditto -	ditto	1	–	–	1
51	Thomas Anderson, farmer, Fans - -	Lord Polworth -	1	after -	- -	- -	1	–	1	–
52	Walter Knox, Hawick - - - -	- ditto - -	1	ditto -	- -	- -	1	–	–	1
53	Walter Knox, jun., Hawick - - -	- ditto - -	1	ditto -	- -	- -	1	–	–	1
54	James Knox, farmer, Hulterburn - -	- ditto - -	1	ditto -	- -	- -	1	–	1	–
55	Walter Brydon, Annalshope - - -	Mr. Pott - -	–	- -	assumption	after	1	–	1	–
56	Peter Johnston, farmer, Alton - -	- ditto - -	–	- -	- ditto -	ditto	1	–	–	1
57	John Moffat, farmer, Garwald - -	Duke of Buccleuch	–	- -	- ditto -	ditto	1	–	–	1
58	James Moffat, farmer, ditto - - -	- ditto - -	–	- -	- ditto -	ditto	1	–	–	1
59	Alexander Harlay Maxwell, Duke of Buccleuch's Chamberlain at Langholm.	Scott, of Gala -		- -	transfer -	after	–	1	–	1
60	Thomas Crichton, Duke of Buccleuch's Chamberlain at Drumlanrig.	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
61	William Brydon, residing at Philogar -	Pringle, of Torwoodlee.	–	- -	assumption	ditto	1	–	–	1
62	William Young, jun., Whitebank - -	Pringle, of Whitebank.	–	- -	- ditto -	ditto	1	–	1	–
63	Thomas Young - - ditto - -	- ditto - -	–	- -	- ditto -	ditto	1	–	1	–
64	John Haldane, brewer, Galashiels - -	Scott, of Gala -	–	- -	transfer -	after	–	1	–	1
65	William Haldane, jun., - ditto - -	- ditto - -	–	- -	- ditto -	ditto	–	1	1	–
66	James Wilson, writer, Hawick - -	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
67	Thomas Wilson, manufacturer, Hawick -	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
68	Elliot Anderson, Galashiels - - -	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
69	Andrew Hislop, manufacturer, Galashiels	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
70	William Mein, of Ormiston - - -	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
71	Andrew Mather, farmer, Faugh-hill -	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
72	Andrew Easton, farmer, Alemor - -	Pringle, of Clifton	1	after -	- -	- -	1	–	1	–
73	Robert Laidlaw, farmer, Bowerhope -	Lord Napier -	1	ditto -	- -	- -	1	–	1	–
*74	George Easton, Alemor - - -	Pringle, of Clifton	1	before -	- -	- -	1	–	1	–
*75	Alexander Laidlaw, Bowerhill - -	Lord Napier -	1	ditto -	- -	- -	1	–	1	–
	1835:									
76	Major Archibald Oliver, of Bush - -	Scott, of Gala -	–	- -	transfer -	after	–	1	–	1
77	Samuel Oliver, Whitehill - - -	- ditto - -	–	- -	ditto -	ditto	–	1	–	1
78	Robert Thorburn, Jumperbank - -	Pringle, of Torwoodlee.	1	after -	- -	- -	1	–	–	1
79	Walter Thorburn, merchant, Peebles -	- ditto - -	1	ditto -	- -	- -	1	–	–	1
80	David Haldane - ditto - Edinburgh -	Scott, of Gala -	–	- -	transfer -	after	–	1	–	1
81	Hugh Lees, writer, Galashiels - -	- ditto - -	–	- -	ditto -	ditto	–	1	1	–
82	James Cranstown, Smailholm - -	- ditto - -	–	- -	ditto -	ditto	–	1	–	1
83	John Cranstown, writer, Galashiels -	- ditto - -	–	- -	ditto -	ditto	–	1	1	–
	Carried forward - - - - - - - -		42	- -	- -	- -	46	37	48	35

No.	NAMES.	PROPRIETOR of ESTATE.	Original Tenants.	Before or after 1832.	Tenants by Deed of Assignation or Transfer.	Before or after 1832.	Agricultural Tenants.	Tenants not Agricultural.	Resident.	Non-resident.
	1835 - - - - Brought forward - - -		42	- -	- -	- -	46	37	48	35
84	Robert Thomson, merchant, Edinburgh -	Scott, of Gala -	–	- -	transfer -	after	–	1	–	1
85	John Thomson - ditto - ditto -	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
86	Peter Kerr, Kelso - - - - -	- ditto - -	–	- -	- ditto	ditto	–	1	–	1
87	John Gray, Kelso - - - - -	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
88	William Oliver, merchant, Edinburgh -	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
89	Robert Oliver, innkeeper, Galashiels -	- ditto - -	–	- -	- ditto -	ditto	–	1	1	–
	1836:									
90	William Roberts, manufacturer, Galashiels.	Scott, of Gala -	–	before	- -	- -	–	1	1	–
91	John Smart, Whitebank-mill - - -	Pringle, of Whitebank.	–	- -	assumption	after	1	–	1	–
92	Thomas Fairgrieve, Galashiels - -	Scott, of Gala -	–	- -	transfer -	after	–	1	1	–
93	Robert Turnbull, accountant, Galashiels	- ditto - -	–	- -	- ditto -	ditto	–	1	1	–
94	George Innes, the Haining - - -	- ditto - -	–	- -	- ditto -	ditto	–	1	1	–
95	Daniel Innes, Gilmerton - - -	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
96	Adam Paterson, W. S., Edinburgh - -	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
97	James Paterson, merchant, Edinburgh -	- ditto - -	–	- -	- ditto -	ditto	–	1	–	1
98	William Scott, dyer, Galashiels - -	- ditto - -	–	- -	- ditto -	ditto	–	1	1	–
99	Walter Govanlock, jun., Greenhill - -	Burgh, of Selkirk	–	- -	assumption	after	1	–	1	–
100	Alexander Smart, Whitebank-mill - -	Pringle, of Whitebank.	1	- -	- -	- -	1	–	1	–
			47		TOTAL - -		49	51	57	43

Note.—The nine marked thus*, were enrolled in 1832 as soletenants, but were afterwards re-enrolled as joint tenants.

ABSTRACT or TABLE of JOINT TENANCIES:

	I.—TENANTS under the £. 50 QUALIFICATION.								II.—TENANTS under Long LEASES, £. 10 QUALIFICATION.				
	AGRICULTURAL TENANTS.						TENANTS, NOT AGRICULTURAL.						
Year of Enrolment.	By Lease before 1832.	By Lease after 1832.	By Assumption after 1832.	Resident.	Non-resident.	TOTAL.	Resident.	Non-resident.	By Lease or Transfer before 1832.	By Lease or Transfer after 1832.	Resident.	Non-resident.	TOTAL.
1832 -	16	- -	- -	12	4	16	2	- -	15	- -	12	3	15
1833 -	5	- -	2	5	2	7	1	- -	1	- -	- -	1	1
1834 -	2	6	13	12	9	21	2	- -	- -	10	1	9	10
1835 -	- -	2	- -	- -	2	2	- -	- -	- -	12	3	9	12
1836 -	1	- -	2	3	- -	3	- -	- -	1	7	5	3	8
	24	8	17	32	17	49*	5	- -	17	29	21	25	46

* Nine of this number were originally enrolled as sole tenants.

Adam Paterson.

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— No. 4. —

Appendix, No. 4.

EXTRACTS from MINUTE BOOK of the PARTICULAR REGISTER of SASINES, REVERSIONS, &c., kept for the Shires of *Roxburgh, Selkirk* and *Peebles*, kept at Kelso.

Selkirkshire, 21 February 1837, between Eleven Forenoon and Twelve Noon.

SEISIN, dated 1 February 1837, in favour of Pulteney Mein, Esquire, residing at Forge; James Church, tenant, of town of Sark; James Church, junior, his son, residing there; Alexander Hay Borthwick, tenant, at Hopsrig; Thomas Chalmers Borthwick, his son, residing there; Captain John Borthwick, residing at Langholm; Archibald Stavert, farmer, at Laughtrees; and Andrew Stavert, farmer, at Dykecrofts; equally among them, in life-rent during their respective lives, of all and whole a seventh part or share, *pro indiviso*, of all and whole the lands of Over and Nether Dalglieshes, with houses, &c. in the parish of Ettrick; proceeding on a disposition dated 28 January 1837, granted by John Alexander Pringle, of the Honourable East India Company's civil service, residing in Edinburgh. Presented by William Smith, writer, in Kelso.

(signed) *John Smith.*
William Smith.

Selkirkshire, eodem die et tempore.

SEISIN, dated 1 February 1837, in favour of Robert Laing, junior, farmer, residing at Campend; William Plummer, senior, flesher, in Dalkeith; Alexander Wilson, ironmonger there; William White, manufacturer there; John Bertram, farmer, at Lawfield; James Bertram, farmer, at Smeaton; John Thomson, farmer, at Wester Cowden; and John Ronaldson, writer, residing at East Clermont-street, Edinburgh; equally among them, in life-rent during their respective lives, of all and whole a seventh part or share, *pro indiviso*, of all and whole the lands of Over and Nether Dalglieshes, with houses, &c., in the parish of Ettrick; proceeding on a disposition, dated 28 January 1837, granted by John Alexander Pringle, of the Honourable East India Company's civil service, residing in Edinburgh. Presented by William Smith, writer, in Kelso.

(signed) *John Smith.*
William Smith.

Selkirkshire, eodem die et tempore.

SEISIN, dated 1 February 1837, in favour of Alexander Waugh, tenant, at Laretburn; James Rutherford, tenant, at Fennes; George Robison, tenant, at Brotherstone; George Dunlop, tenant, at Buchiecot; Thomas Frier, tenant, at Farrs; Samuel Fyfe, brewer, in Melrose; Peter Young, surgeon, in St. Boswell's; and James Simson, writer, in Melrose; equally among them, in life-rent during their respective lives, of all and whole a seventh part or share, *pro indiviso*, of all and whole the lands of Over and Nether Dalglieshes, with houses, &c., in the parish of Ettrick; proceeding on a disposition, dated 28 January 1837, granted by John Alexander Pringle, of the Honourable East India Company's civil service, residing in Edinburgh. Presented by William Smith, writer, in Kelso; one word delete.

(signed) *John Smith.*
William Smith.

Selkirkshire, eodem die et tempore.

SEISIN, dated 1 February 1837, in favour of Thomas M'Millan Scott, younger, of Wauchope, residing in Edinburgh; Robert Boston, tenant, at Langshaw; Thomas Kerr, of Craig-house; Alexander Crawford, writer, in Lauder; George Simson, residing in Lauder; Walter Tod, residing at Langhope; William Young, residing in Selkirk; and William Thomson, residing at Gate-house-cote; equally among them, in life-rent during their respective lives, of all and whole a seventh part or share, *pro indiviso*, of all and whole the lands of Over and Nether Dalglieshes, with houses, &c., in the parish of Ettrick; proceeding on a disposition, dated 30 January 1837, granted by John Alexander Pringle, of the Honourable East India Company's civil service, residing in Edinburgh. Presented by William Smith, writer, in Kelso.

(signed) *John Smith.*
William Smith.

Selkirkshire, eodem die et tempore.

SEISIN, dated 1 February 1837, in favour of George Robertson, farmer, at Harpertown; Robert Robertson, residing in Kelso; William Boog, farmer, at Sweethope; Alexander Elliot, residing in Kelso; Walter Elliot, architect there; John Elliot, banker, in Jedburgh; James Curry, innkeeper, at Cornhill; and Thomas Potts, writer, How-street, Edinburgh; equally among them, in life-rent during their respective lives, of all and whole one-seventh part or share, *pro indiviso*, of all and whole the lands of Over and Nether Dalglieshes, with houses &c., in the parish of Ettrick; proceeding on a disposition, dated 28 January 1837, granted by John Alexander Pringle, of the Honourable East India Company's civil service, residing in Edinburgh. Presented by William Smith, writer, in Kelso.

(signed) *John Smith.*
William Smith.

Appendix, No. 4.

Selkirkshire, eodem die et tempore.

SEISIN, dated 1 February 1837, in favour of Colonel James Lindsay, of Balcarras; Robert Lindsay, residing at Aberdour-house; James Clerk, eldest son, and John Clerk, third son, of Sir George Clerk, baronet, of Pennycuik; equally among them, in life-rent during their respective lives, of all and whole one-fourteenth part or share, *pro indiviso*, of all and whole the lands of Over and Nether Dalglieshes, with houses, &c., in the parish of Ettrick; proceeding on a disposition, dated 28 January 1837, granted by John Alexander Pringle, of the Honourable East India Company's civil service, residing in Edinburgh. Presented by William Smith, writer, in Kelso.

(signed) *John Smith.*
William Smith.

Selkirkshire, eodem die et tempore.

SEISIN, dated 1 February 1837, in favour of David Milne, younger, of Milne Graden, advocate, residing in Edinburgh; William Pitt Dundas, advocate, residing there; Mark Napier, advocate, residing there; Robert Blackwood, bookseller, in Edinburgh; Alexander Blackwood, bookseller there; Peter Tait, bookseller there; John Guthrie Tait, bookseller there; Archibald Steuart, doctor of medicine, residing in Great King-street, Edinburgh; Captain Walter Scott, of the Honourable East India Company's service, residing in Edinburgh; William Alexander Forrester, writer, residing at Lynedoch-place, Edinburgh; James Jackson Smith, solicitor, Supreme Courts, Edinburgh; and John Primrose Bertram, writer to the signet, residing there; equally among them, in life-rent during their respective lives, of all and whole three-fourteenth parts, *pro indiviso*, of all and whole the lands of Over and Nether Dalglieshes, with houses, &c., in the parish of Ettrick; proceeding on a disposition, dated 28 January 1837, granted by John Alexander Pringle, of the Honourable East India Company's civil service, residing in Edinburgh. Presented by William Smith, writer, in Kelso.

(signed) *John Smith.*
William Smith.

Kelso, 28 February 1837.

Extracted from the Minute Book of the Particular Register of Seisins, &c., for the Shires of Roxburgh, Selkirk and Peebles.

John Smith, Keeper.

— No. 5. —

Appendix. No. 5.

EXCERPT from MINUTE BOOK of GENERAL REGISTER of SASINES.

3 July 1833, between Seven and Eight.

Lib. 1721. Selkirk.

SA. Ebenezer Beattie, of Ettrick Hall, of the lands of Over and Nether Dalgleishes, and others, with the pertinents; upon disposition by the trustees of the deceased Thomas M'Millan, of Shorthope. Dated this day, and presented by William Black, W. E.

Ar. Wishart, Dep. (signed) *William Black.*

Eodem die et horis.

Selkirk.

SA. The Royal Bank of Scotland, of the above lands, and others, in security of eleven thousand pounds sterling, on bond and disposition in security, by the above Ebenezer Beattie. Dated and presented *ut supra.*

Ar. Wishart, Dep. (signed) *William Black.*

---

4 July 1833, between Two and Three.

Lib. 1721. Selkirk.

SA. Lawrence Tweedie, of Oliver, of the lands of Over and Nether Dalgleishes, and others, in security of four thousand pounds sterling, upon a bond and disposition in security by Ebenezer Beattie, of Ettrick Hall. Dated 3d current, and presented by William Black, W. E.

Ar. Wishart, Dep. (signed) *William Black.*

(Compared) *Adam Paterson.*

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REPORT

FROM THE

SELECT COMMITTEE

ON

METROPOLIS POLICE OFFICES;

WITH THE

MINUTES OF EVIDENCE,

APPENDIX AND INDEX.

Ordered, by The House of Commons, *to be Printed,*
29 *June* 1837.

Veneris, 14° *die Aprilis*, 1837.

Ordered, That a Select Committee be appointed to inquire into the provisions of the 3d & 4th Will. IV., c. 19, (Metropolis Police Offices) with a view to the further Improvement of the same.

And a Committee is appointed of—

Mr. Hawes.
Mr. Fox Maule.
Sir Robert Peel.
Mr. Hume.
Mr. Ross.
Lord Hotham.
Mr. Roebuck.
Mr. Estcourt.
Mr. Howard Elphinstone.
Mr. Poulett Scrope.
Mr. Clay.
Mr. Marshall.
Lord Viscount Howick.
Mr. Robert Clive.
Mr. Alderman Wood.

Ordered, That the said Committee have power to send for Persons, Papers and Records.

Ordered, That Five be the Quorum of the said Committee.

Jovis, 29° *die Junii*, 1837.

Ordered, That the Committee have power to report the Minutes of the Evidence taken before them to The House.

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MINUTES OF EVIDENCE - - - - - - - - - p. 1
APPENDIX - - - - - - - - - - - - - p. 181
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REPORT.

THE SELECT COMMITTEE appointed to inquire into the Provisions of the 3d & 4th WILL. IV. c. 19 (METROPOLIS POLICE OFFICES), with a view to the further Improvement of the same; and who were empowered to report their Opinion and the MINUTES OF THE EVIDENCE taken before them to The HOUSE:——REPORT as follows:—

YOUR COMMITTEE have proceeded with the Inquiry entrusted to them, and have been occupied in the reception of the Evidence of Witnesses of great experience and knowledge in the administration of Justice, and more especially in that branch of it which was referred to the consideration of Your Committee, when the unexpected and melancholy demise of his late Majesty, and the prospect of a very early termination of the Session, have induced Your Committee to suspend the further progress of the Inquiry.

Under these circumstances, it did not appear to Your Committee that there would be sufficient time to obtain the evidence necessary for the purpose of satisfactorily recommending alterations in the Police Office Act of the Metropolis, or to consider and digest the various and important opinions and suggestions contained in the Evidence already obtained.

Your Committee therefore have come to the determination to close the inquiry for the present, and in the mean time to recommend the renewal of the present Act for One Year.

Your Committee also advise the re-appointment of a Select Committee for the purpose of completing the investigation in the ensuing Session of Parliament.

29 *June* 1837.

ATTENDANCE OF THE COMMITTEE.

Jovis, 20° die Aprilis, 1837.

Mr. HAWES in the Chair.

Mr. Ross.
Lord Hotham.
Mr. Alderman Wood.
Mr. Marshall.
Mr. Fox Maule.
Mr. H. Elphinstone.
Mr. Clay.
Sir Robert Peel.
Mr. Estcourt.

Jovis, 29° die Junii, 1837.

Mr. HAWES in the Chair.

Mr. Alderman Wood.
Mr. Estcourt.
Mr. Fox Maule.

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MINUTES OF EVIDENCE.

Lunæ, 24° *die Aprilis*, 1837.

MEMBERS PRESENT :

Mr. Fox Maule.	Mr. Robert Clive.
Mr. Ross.	Mr. Alderman Wood.
Lord Hotham.	Mr. Marshall.
Mr. Estcourt.	

MR. HAWES, IN THE CHAIR.

Samuel March Phillipps, Esq., called in; and Examined.

S. M. Phillipps, Esq.

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1. *Chairman.*] YOU are Under Secretary of State for the Home Department?—I am.

2. The Police of the Metropolis generally is more especially under the superintendence of that department?—It is.

3. Have you acquainted yourself with the Report of the Select Committee of the Metropolitan Police in the year 1834?—I have carefully read it.

4. Would you inform the Committee whether any of the recommendations there made in that Report have been adopted by the Home Office?—I will state to the Committee what has been done by the Secretary of State's orders. The Bow-street mounted horse patrol have been transferred to the Police Commissioners; an alteration has been made in the mode of keeping accounts in the police offices, upon a plan approved by an accountant from the Auditor's Office in Somerset House; a plan for a superannuation fund for the Metropolitan Police officers has been settled between the Whitehall Office and the Home Office, and a Bill to carry that plan into effect is being prepared. The receivership of the police offices and the receivership of the Metropolitan Police Office have not been consolidated; there not having been a vacancy, the Secretary of State considered that this alteration might be postponed. In case of a vacancy the change might be made easily, and with very inconsiderable increase of trouble to the receiver of the Metropolitan Police; the business consists chiefly of the examination of accounts.

5. In fact, according to the Report itself, you have rather preferred waiting for a vacancy to making the alteration?—Yes; there would have been a slight saving, as a liberal retiring allowance must have been made to the present receiver, who has held the office for many years, and done the business completely to the satisfaction of the Secretaries of State. It was therefore thought, that for the present it would be better to continue the receivership of the police offices. Another point mentioned in the Report is as to the union of the land and water police. The Committee recommend (rather, I presume, as an experiment), that there should be a river police, under the superintendence of the Commissioners of Police, from Westminster Bridge to Brentford; this has not been done; it has not at any time been called for by the public as a thing wanted for the protection of property; it would be an expensive experiment, and quite useless, unless the whole of the Thames water police is to be ultimately transferred to the Commissioners of Police. That subject is one of great public importance, and for the consideration of the Committee.

6. Do you, from your experience in your office in matters of police, think there is any objection, either practically or on principle, to such a consolidation of the police force as is contemplated by that Report?—I think, in point of practical

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effect, the public would not be benefited by such an alteration; the river police and the land police are quite separate and independent in their duties and in the nature of the business; and I am not aware of any inconvenience experienced by the public from the present system; all along the London side of the river, where the land police is separate from the river police, and must be so long as the City has a separate police, not the least inconvenience, that I have heard of, has been experienced by the separation and unconnected state of those two branches of police; there has not been any complaint, that I know, upon that ground. It appears from the evidence of the Thames Police magistrates, that the business of their office is of a peculiar description, quite unlike that of the other offices in many respects; the offences carried on upon the water are unconnected with those upon the land; the land thieves are a different set from the water thieves.

7. You do not mean to say there is any legal distinction between the crimes committed?—Not the least.

8. Your distinction is rather between those who have to detect, than as to the adjudication upon such cases when they are brought before the magistrates?—Yes; the public, I am of opinion, do not suffer any inconvenience from the land police being in the hands of the Commissioners, and the water police in the hands of the Thames Police magistrates; and I think so for the reasons I have stated, more especially because those two branches of police business are quite distinct and separate; I may add, the business of the Thames Office water police is of a very peculiar and difficult nature.

9. But may it not be fairly considered as one great portion of the executive police?—Unquestionably it is, and the business might be conducted in the hands of the Commissioners; but I will state a reason why it could not be conducted so well; in the first place, I think the Thames Police magistrates, being on the spot where the business is carried on, must be able to give more minute and more strict superintendence to the business of the river police, than the Commissioners at Whitehall would be able to do.

10. Explain to the Committee what you mean by the magistrates being able to give a more minute superintendence over matters of police?—I think they have much less business to do. The water police is nearly the whole of their occupation, and they are more conveniently situated for the purpose, being close at hand, in the place where the business arises. The business itself also is connected with many Acts of Parliament of a very peculiar nature, relating to rights upon the river, the rights of companies on the river, such as the Bumboat Act, the Dock Acts, the Custom-house Acts, and various others.

11. Do you mean to say that the magistrates of the Thames Police Office are chiefly employed in superintending the executive duties of the police placed under them?—I mean that the business of the Thames Police magistrates relates chiefly to the river police, and that the duties of the river constables very much depend upon and are connected with the various Acts of Parliament I have referred to. On the subjects relating to the duties of the river police officers, and how they ought to act on particular occasions, I think the Thames Police magistrates would be able to decide much better than the Commissioners at Whitehall.

12. Do they have to decide them under existing Acts of Parliament?—Certainly, with reference to various Acts.

13. Do those Acts prescribe definitely the duties of the police?—They prescribe rights, and must involve duties of police officers in many instances.

14. Do you not think the Commissioners could interpret those Acts of Parliament, one of the Commissioners being a barrister?—I think not so well.

15. Why?—Because the Thames Police magistrates have had great experience, and are thoroughly acquainted and conversant with that peculiar branch of business; and if there was a change, I think the public would be inconvenienced by the alteration. There is certainly no mystery in that part of the law connected with their office; but it requires a great deal of attention, and these particular Acts of Parliament are sometimes exceedingly intricate. I think it would require so much attention, that I doubt whether the Commissioners of Police, if they were both lawyers, and both of considerable legal knowledge, would soon be able to make themselves masters of the law relative to all the questions that must necessarily arise concerning the executive duties of the river police.

16. Do you think it requires three magistrates to discharge those duties?—I do not refer to the number of magistrates at the Thames Police Office, but to the

nature of the business. If there were only two at the Thames Police Office, I think they would do the business as well as three. The inconvenience that would be felt from the Commissioners having the business, would not arise from their number, being only two, but out of the sort of business which they would have to manage.

17. Suppose the case, that one of those magistrates had the care of the river police as an additional Commissioner or as holding the appointment under the Commissioners, and that the jurisdiction of the Thames Police in that case was extended as far as Brentford, do you conceive there would be any practical difficulty in making such an arrangement?—I think there would be a great objection to any person holding such an appointment under the Commissioners of Police for the purpose of transacting the business which is now transacted by the magistrates of the Thames Police Office.

18. Supposing he was not placed under the Commissioners, but that he remained a Commissioner himself, with a view to the separation of the executive duties of the police from the judicial duties generally, this being one branch of the subject?—If there were another Commissioner appointed, and he were to have the conduct and management of the river police, unquestionably he might after a certain time make himself master of the subject, and the business might be well managed; but it would take some time, I think, before it could be done so well as at present; a very considerable time.

19. Would there not be great advantages, such advantages as are mentioned in the Report, namely, that a unity of purpose and of action would be obtained, which, as stated in the Report, is essential to an effective system of preventive police?—Indeed I think not; I am persuaded there is more of sound than of substance in that remark. I believe that at present no inconvenience whatsoever is experienced from the river police being separated from the land police, and that if both these services of the river and the land police were in the Commissioners' hands, the public would not derive benefit or convenience from the alteration. I am satisfied there is no evil at present experienced from the existing arrangement.

20. You conceive there to be no objection to a magistrate directing his constables or officers to detect a criminal, and adjudicate on the case when brought before him?—It seems to me, that there is no inconvenience at all from the magistrates having the full control over the officers, and adjudicating on any case brought before them by those officers. I confine my observation for the present entirely to the magistrates of the Thames Police Office. I see no inconvenience whatever from their having the full power of employing constables, and adjudicating the cases that are brought before them by those constables.

21. Apply the question generally; do you conceive in reference to other offices that objections might arise, that such a course is objectionable, namely, to the magistrate interesting himself in the detection of that criminal whose case he has to decide upon afterwards?—I should say not; decidedly not.

22. Confining ourselves however at present to the Thames Police, you think there would be no advantage in placing the Thames Police under the Commissioners of Police, keeping in mind that it might be accompanied with the appointment of a separate Commissioner for the superintendence of the river police?—I think the present arrangement is decidedly the best for the interests of the public. The business might unquestionably be done by a separate Commissioner, but it would not be done perhaps for several years with the same precision, accuracy and complete knowledge with which it is done at the Thames Police Office. There are questions of law and questions of fact, even with respect to the conduct of police officers, which are constantly intermixed, and dependent upon many Acts of Parliament; a clever lawyer added to the Commissioners might make himself in time master of the law on the subjects, and when he is master of the law, then the business would be done well.

23. Are there many Acts of Parliament under which the Thames Police magistrates act?—They are called on to act under many Acts of Parliament; but upon this the magistrates themselves will be able to give to the Committee better and fuller information than I am able to give. There are many Acts of Parliament, some relating to the Custom-house, some to the Docks, and various others. I would mention here one other particular, merely financial; the expense of the Thames River Police may be said to be about 6,000 *l.* per annum, which is paid by

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the Treasury; if that 6,000 *l.* were to be paid out of the parish funds in the hands of the Metropolitan Receiver (on the transfer of the river police to the Commissioners), it would be such a charge as they would scarcely be able to bear. I think the expenditure would be much too near the receipts, and that the funds could not possibly bear the additional charge.

24. But in the alteration suggested in the course of the examination, it is not proposed to lessen the sum paid from the Treasury towards the support of the Thames Police, and therefore I would ask, whether you have not assumed in the change a diminution of the amount paid by the Government, and an increase in the expenses of the parish, which would not be the fact?—Certainly there would be no inconvenience with respect to the funds under the control of the Commissioners, if the Treasury advanced to them the sum which is now advanced for the use of the Thames Police Office.

25. Mr. Alderman *Wood.*] You stated that you thought it was better done there, as regards several Acts of Parliament; do you think it is much better done by the magistrates, in the appointment of the proper persons to fill those situations, than it could be done by Commissioners who have not understood the subject of water police?—I think so. I am of opinion that the Thames Police magistrates are better able to select for that service; from their knowledge and long experience, they would be able to appoint, for the duties of the river constables, more efficient men than the Commissioners would be able to choose, without experience; knowledge would, of course, be acquired in time; but for the present the appointments would be better made by the Thames Police magistrates. In saying this, I mean it with reference generally to the river police business, and not only as to the selection of officers.

26. Do you know whether they appoint watermen generally?—Watermen generally.

27. Mr. *Estcourt.*] I believe the jurisdiction of the Thames Police magistrates extends upon the land as well as the water?—They have comparatively very little business on land; if the river business were taken away from them, that police office might be put an end to at once.

28. Still they have jurisdiction on land?—Yes, a limited jurisdiction; their police business on land is inconsiderable.

29. Mr. Alderman *Wood.*] They do the general business of the parish?—Yes.

30. And other police matters which come within their range?—Yes.

31. Lord *Hotham.*] I presume the constables attached to the different police offices are appointed in the same way as the Metropolitan Police?—They are appointed by direction of the Secretary of State to the police offices; and by the Secretary of State on the recommendation of the Commissioners for the Metropolitan Police.

32. Mr. *Estcourt.*] If there was to be a union of the Thames Police with the Metropolitan Commissioners, as the Secretary of State has the appointment of all the officers, he would have the appointment of the officers to be employed on the river, and he would of course select watermen, or whatever description of persons would be most efficient for the discharge of the duties on the river?—The Secretary of State invariably adopts the recommendation of the Commissioners, so that in fact all the appointments may be considered as the appointments of the Commissioners. The Commissioners send over recommendations that such persons should be appointed; as a matter of course they are appointed; so that no part of the responsibility falls on the Secretary of State, nor is he called on at all to consider the qualifications of any persons appointed. So also with respect to the Thames Police Office; the business is very peculiar, and when the Thames Police magistrates recommend persons for the river police, as a matter of course the Secretary of State adopts the recommendation.

33. Then if it has been found that a peculiar description of persons are best suited for that duty, would there be any thing that would impede or prevent the Commissioners of Metropolitan Police from selecting the same description of persons to fill those offices?—No; I only think that the magistrates of the Thames Police Office would make better appointments for some time, being acquainted with the business, and having long experience.

34. *Chairman.*] You have stated as an objection to the consolidation of the two forces of land and river police under the Commissioners, that there would be a considerable difficulty in the instruction of any new superintendents in their duties;

duties; now you are aware that the principal duties with respect to the river police are discharged by surveyors, who are appointed by the police magistrates?—I am aware of that.

35. Are you aware that the duties of these surveyors are detailed in instructions and orders made by the magistrates, and entered from time to time in a book, which I find stated by Mr. Ballantine, in his evidence before the Police Committee, in 1833?—Yes, I perceive so from the evidence.

36. Do you not think that would materially assist any person who might be appointed for the first time to the duty?—It would.

37. And tend to obviate the practical difficulty you suggest on the transfer of the jurisdiction?—I think it would not obviate it; it would not remove the inconvenience that the public would experience from it; but it would be of advantage to the Commissioners in supplying information.

38. With reference to what you stated as to the inexpediency of separating the jurisdiction of the river from the magistrates, permit me to read you a question and answer from the evidence of Mr. Ballantine, and ask your opinion on that, with respect to the opinions you have already expressed; Question 1631, Evidence 1833: "Do you think the efficiency would be benefited if you were left in charge only of the river?" Answer, "I think it would be, as in that case our whole attention would be directed to the original objects of the establishment; a large land district necessarily occupies a part of the time of the magistrates and clerks, which would otherwise be employed in furthering the direct objects of the Thames Police."?—I have no doubt that is correct; I see nothing in what I have said inconsistent with that. In another part it appears Mr. Ballantine has said, the business of the land police is inconsiderable; if left in charge only of the river, their attention would be completely and exclusively confined to one subject. Their land police is comparatively very small, and does not occupy much of their attention. I conceive Mr. Ballantine means nothing more than this, that if three magistrates give their attention exclusively to one business (whether extensive or small), they will be able to do the business more completely than if they have other business at the same time.

39. Does not Mr. Ballantine's answer sanction a separation of the river police from the land police?—I infer from it only, that he is of opinion it would be better if they kept to the river police, and confined their attention entirely to it.

40. That is to say, that Mr. Ballantine thought that confining the river police exclusively to persons appointed to superintend it, would be a benefit, from its peculiar nature?—I should doubt whether Mr. Ballantine meant to go so far as that.

41. Are you aware of the extent of business, land and river together, transacted at the Thames Police Office?—I cannot say that I am.

42. Do you think that the number of magistrates at that office could admit of reduction without injury to the public service?—I am not able to form a decisive or satisfactory opinion upon that point, not being sufficiently acquainted with the extent of the business. I might offer an opinion with respect to the number of magistrates generally employed in the police offices, but I do not sufficiently know the extent and weight of the business of the Thames Police Office, to be able to say it could be conducted satisfactorily by less than the present number.

43. The former Committee suggested the expediency of incorporating the constables of the police with the Metropolitan Police?—That has not been done.

44. Have you formed any opinion on the expediency of the adoption of that recommendation of the Committee?—The Committee recommended that the Metropolitan Police officers should be sent into the different police offices; that they should be in the dress of the Metropolitan Police, and be paid by the Metropolitan Police Commissioners; and that they should be subject to the general regulations and control of the Metropolitan Police service, but be also under the immediate control of the police magistrates while attached to the police offices. I think there would be no objection to that, but I think it would not remedy the inconvenience which has been experienced. The inconvenience alleged is that arising out of the issuing of warrants. According to the existing practice, if any person (suppose not a police officer) complaining of a felony or other offence, should apply to the police office for a warrant, the magistrate, after receiving the

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charge, issues a warrant to a constable of the office; the constable goes to execute the warrant, and then it appears that some other officer, one of the Metropolitan Police, is employed at the same time in hunting up the same felony; so that, as the Commissioners state, the two come immediately into collision, and impede each other. That is the inconvenience which is complained of. Colonel Rowan, in his letter to the Secretary of State (which stands last in the Appendix), mentions this as sometimes occurring. Another instance of inconvenience is said frequently to arise in cases where a Metropolitan Police officer applies to a magistrate to issue his warrant on a charge of felony. The general practice of the magistrates in such a case is to give the warrant to their own constable, not to the Metropolitan Police officer; he may be attended by the Metropolitan Police officer, but the warrant is to be executed by the constable of the police office. The inconvenience of this practice is, as the Commissioners say, that the spirit and zeal of the Metropolitan Police officer are checked; and they say it often happens, from the want of necessary co-operation, the thief escapes. That is an evil unquestionably. How is the inconvenience to be remedied? The proposed plan, I think, would not remedy it. If the Metropolitan Police constables were to be attached to the different offices, I presume they would be allowed to continue there as long as the magistrates might wish to employ them, as long as the police magistrates should be satisfied with their conduct. I understand this to be part of the plan recommended by the Committee, that the police magistrates should be at liberty to keep them as long as they please. They are to be attached to the police offices, and there to continue permanently, provided the magistrates are satisfied with their conduct. This would be promotion to them, and would not remove them from further promotion in the Metropolitan Police service. But when once attached to the office, there they are to continue as long as the magistrates approve of them, subject to the general control of the Commissioners. Now, with respect to the first inconvenience which I have mentioned, namely, where any person (not an officer) complaining of a felony applies for a warrant, and the warrant is delivered to a constable of a police office, I think that might be obviated in this way; when the officer appears with the warrant, and is engaged in the business of the warrant, any Metropolitan Police officer who may be hunting up the same felony ought to desist. There might be a regulation issued by the Commissioners, that when any officer is acting under the authority of a warrant on a particular business, no other officer should interfere with him. With respect to the second inconvenience, I do not see how that would be removed by the proposed plan; for suppose the police magistrates to have Metropolitan Police officers attached permanently to their offices, or so long as they choose to keep them, in case of applications for warrants on the part of the Metropolitan Police, is the police magistrate to give the warrant to a constable, of whom perhaps he knows nothing, or is he to be allowed to employ a Metropolitan Police constable attached to his office? If he employs a constable attached to his office, and not the officer who makes the charge and applies for the warrant, it is quite evident the same inconvenience will be experienced which is said now to be experienced under the present system. Let me suppose any number of Metropolitan Police officers to be attached to any one office; they conduct themselves well; they give entire satisfaction; they continue there for half a year, a year, or for two years; the police magistrates are thoroughly acquainted with their powers and talents, and have confidence in them. Now unless they are compelled to give the warrant to the party who applies for it, they will generally prefer the officer attached to their own office, whom they know, and whom they wish to serve. Here, then, precisely the inconvenience and difficulty will arise which are complained of. I do not see how it is possible to prevent this, except in one way, which I will mention presently. The plan recommended by the Commissioners, and adopted, as I understand, by the Committee, is that there should be a certain number of Metropolitan Police officers attached to each police office, to be under the control of the police magistrates, subject to the general discipline and control of the Commissioners, and that they should continue there doing the duties of the office. If these constables gain the confidence and good opinion of the magistrates, are the magistrates to be absolutely prohibited from employing them in any case in which a warrant is applied for? I do not see how you can by any regulation prohibit him from doing this, or force him to deliver the warrant to the party applying for it. You must compel the magistrate to deliver the warrant to the party applying for it, and not to the constable of his office, or else this difficulty will

will arise. If the magistrates are to be at liberty to employ the officers attached to their own office, the inconvenience complained of must necessarily occur.

45. Mr. *Ross.*] If the officers employed belong to the Metropolitan Police, do you think the difficulty would exist?—Indeed I do; though they belong to the Metropolitan service, they are attached to a particular police office. I understand the magistrates who approve of the proposed plan, all to take this for granted, that they are to be allowed to employ their own officers in preference to others; by their own, I mean the officers attached to their office.

46. My view would be this: suppose a certain number of officers, now on the establishment of the Metropolitan Police, being attached to each of the public offices, that the whole of the warrants would then necessarily be given by the magistrates of those offices to the officers who are attached to the particular office; but those officers being part of the general force, there would be less jealousy existing between them and their brother officers than there is now between the officers attached to the different offices, they not forming part of the Metropolitan Police?—The officers attached would still feel it their interest to be in the confidence of the magistrates, and to depend upon them. It is very true, they are still Metropolitan Police officers, but when they are once attached to a particular police office, they would soon be closely connected with it; the other Metropolitan constables would also look upon them as separate from their own body, both in duties and interest. With these feelings on both sides, the same inconvenience which has been mentioned would arise.

47. In the same way, a difficulty must arise now, if any of the officers of the Metropolitan force become acquainted with any felony?—In the same way.

48. *Chairman.*] Would there not be this advantage, which is spoken of in the Report, that when a felony was committed and an officer was employed, that might be made the subject of communication to the Commissioners, and so prevent any other person being employed in their force on it?—A good deal might be done in that way; if a warrant should be applied for by a Metropolitan Police officer, or by any other person, and the magistrate issues his warrant to an officer attached to his office, it might perhaps be convenient to give notice to the Commissioners of the issuing of the warrant, to prevent interference or collision.

49. Would not that obviate the practical difficulty on which you have recently insisted?—Not altogether. It would not remedy the inconvenience that is said to arise, where a warrant is applied for by a Metropolitan Police officer; in that case, if the magistrate is to be at liberty to issue his warrant to his own officer, that is, to the officer attached to his office, the same inconvenience would arise.

50. Assuming the issuing of the warrant was always made known to the Commissioners, could they not, by arrangements of their own, prevent two warrants being issued, and being acted on by two distinct constables of their own force?—I think the issuing of two warrants might easily be prevented.

51. And by the same means, might not the employment of two constables in the discovery of the same felony be prevented?—I do not see how that could be prevented by the plan recommended; the report of a felony may spread over a division, and several Metropolitan officers may be employed all at once, in a very short time, upon the same business.

52. But on the present system it is possible two warrants may issue; may not one be applied for at Hatton-garden and the other at Queen-square?—The constable ought to apply to the office to which the business of the division is carried in the usual course; two warrants would not then issue.

53. The Committee may assume, then, from what you have stated, that there is no practical objection to complying with the recommendation of the Committee, with the qualification that you have already stated?—I see none, supposing the magistrates to have the power to keep the officers attached, as long as they choose, and to dismiss them, and have others in their place.

54. Would there not be this advantage from the adoption of the recommendation of the Committee, that a system of rewards would be introduced into the police force, and also a system of punishments, namely, that which would be in the hands of the police magistrates, who, upon the misconduct of an officer, could again return him on the hands of the Commissioners, to be replaced in the force, or not, as they might think fit?—With respect to the system of rewards, that is accomplished already, because every constable of the police offices is appointed out of the Metropolitan Police; that has been the general rule for many years.

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By the regulations of the Secretary of State, the police constables at the police office are appointed out of the Metropolitan Police. There has been an exception where the police magistrates have recommended persons already in the office for promotion in the place of constables.

55. Then the Committee understand correctly so far, that the police officers attached to the magistrates are gradually being selected from the police force?—Certainly; but when they are appointed to the police office, they no longer continue upon the Metropolitan Police.

56. Mr. *Estcourt.*] Is that the fact, that they do not remain on the establishment; are they not paid by the Commissioners?—No, they are not; they are paid out of the funds of the office.

57. *Chairman.*] The Committee understand correctly, from your evidence, that there is no practical objection to that consolidation recommended by the Committee?—I think it would fail.

58. You have no objection to it otherwise?—Not if the magistrates, on an application for a warrant, are authorized to employ the officers attached to their respective offices; I see no objection, supposing that to be part of the plan recommended. The magistrates also, who at present have a power by law of punishing constables for misconduct, should have the power of dismissing or discharging *instanter*, in case of misconduct, any Metropolitan Police constable attached to his office.

59. Discharging from the duties of the office, or from the police force?—I mean discharging from the office. Discharging from the police force would be by the Commissioners, on a representation made to them; and a communication might be made also to the Secretary of State. The only remedy for the inconvenience complained of, I think, is this, that the Commissioners should issue warrants on charges of felony or other offences. It seems to me, this would be an effectual remedy.

60. Would not that, in point of fact, be adding somewhat of judicial duty to their present executive duties?—I think not; the issuing of the warrant on a charge of felony cannot be considered judicial. The Commissioners need do nothing beyond the issuing of the warrant, they need not inquire into the matter afterwards. There would be the great advantage of despatch, if the Commissioners were to issue warrants. In the interval between three o'clock and seven, when the police offices are shut, it may be necessary to have a warrant; but perhaps none can be got, the offices being shut; in that interval the thief may escape; but in the course of three hours, the Commissioners might have the opportunity of securing the thief, if they had issued the warrant at the moment. In all cases of offences committed between Saturday evening and Monday morning, the time for apprehending the offender is lost. If a warrant is necessary, it may not be to be procured till the police office opens on the Monday. The business of issuing the warrant is not strictly of a judicial nature, and does not appear to me to be inconsistent with the principle of the Metropolitan Police. The charge might be made before a Commissioner, and taken down in a few words, and then the warrant might immediately issue. The offender, as soon as taken, should be carried before the magistrate at the police office. This plan would prevent the collision spoken of by the Commissioners.

61. Mr. Alderman *Wood.*] Is the Commissioners' clerk already able to undertake the filling up the warrant?—That must be provided for. The Commissioners must of course be generally acquainted with the criminal law. I am persuaded, when the Metropolitan Police was established by Sir Robert Peel, it was foreseen that it might be necessary, at some future time, for the Commissioners to issue warrants. By the Metropolitan Police Act, both the Commissioners are to be justices of the peace, and one of the Commissioners appointed was a barrister. It was probably foreseen that it might be a desirable thing for them to issue warrants.

62. *Chairman.*] Are they not justices of the peace at this moment, and cannot they issue warrants?—Certainly.

63. Tell me why, entertaining the opinion you do, the Home Office has not instructed them so to do?—I have mentioned it often to them in conversation.

64. In point of law there is nothing to prevent this being allowed?—Nothing.

65. Would they not require some recommendation or understanding from the Home Office to that effect before they did it?—I have supposed the Commissioners considered

considered this to be no part of their business, and that they would not wish to undertake it.

66. Would it not give them so much to do, coupled with their other duties, that they could not perform it?—I think it might easily be done.

67. You would make the issuing of the warrant part of their executive duty?—Yes.

68. And all judicial duties founded on the warrant you would refer to the police magistrate?—Yes; I think that would make it complete. I would add, that whenever the Police Commissioners issue a warrant, notice should be given to the police office to which the business would go in the ordinary course, upon which the police magistrates should have their hands stopped, and not issue any fresh warrant in that case.

69. Mr. *Estcourt.*] That is, that the Commissioners are not to issue any warrants?—I mean, that if they should issue a warrant, they might give information to the police office to which the business would be sent, according to the course of business, and then that the magistrates should not issue another warrant after receiving such information.

70. Do you mean to continue the power to the police magistrate to issue warrants as he now does?—No; I do not see how that can be discontinued. Any person living in the neighbourhood of the place making a charge of felony, the magistrate would, of course, issue his warrant as he now does; but it might sometimes be a convenience to the Commissioners that there should be information given to them of a warrant issuing.

71. You think there should be a communication made by the police magistrate to the Commissioners to inform them he has issued a warrant; in the same way you would have a recipocral communication made to the magistrate by the Commissioners when they issue a warrant?—If convenient or necessary, it might easily be done.

72. Do you consider there is any responsibility attaching to magistrates, which renders it necessary for them to give the warrant to their own officer in preference to the police officer who applies for the warrant, as matters now stand?—If the magistrate issues his warrant, and has good ground for issuing it, he is not responsible, and not liable to an action.

73. Then, if such being the case, is there any other reason for the magistrate giving the warrant to be executed by his own particular officer, with reference to the police officer, than the mere partiality of the magistrate for his own officer?—Not mere partiality; he knows the capacities and powers of the officer, who may have been a long time acting under his orders, and prefers him as best for the purpose; and if the magistrates retain the power of employing constables attached to their office, they will have a preference, and will employ them.

74. Then, if I understand you, it is a mere matter of election and choice?—In the generality of cases it is; in some cases the issuing of the warrant is attended with more responsibility, particularly with respect to search warrants.

75. Is there any other responsibility or danger attached to the magistrate who issues a warrant within the bounds of the metropolis, than there is to a magistrate who issues a warrant in the country?—No, not more.

76. I apprehend I am right when I say, that an officer in the country, wholly unknown to a magistrate, but at a considerable distance, at the limits, perhaps, of a large division, and making an application to a country magistrate for a warrant, the practice of the magistrate in the country is to give that warrant to the officer without any other knowledge of him than that he is a constable of the parish of which he describes himself to be?—The magistrate would exercise his discretion whether he should issue it or not.

77. Will not the magistrate in the metropolis exercise his discretion whether he should issue it or not?—Yes; but the magistrate may be expected to prefer the officer attached to his own office; and if the matter is to be left to his discretion (I do not see how the discretionary power can be taken away), he will employ him in preference. If it should be made peremptory on him to issue his warrant to any Metropolitan Police officer, whenever it is demanded, he might perhaps often refuse to grant a warrant, and then a much greater inconvenience and much greater evil than that complained of would certainly arise.

78. Does he refuse because he apprehends a legal responsibility will attach to himself, and there will be danger in issuing the warrant to an officer he does not know?—Yes, he may apprehend some responsibility.

79. Mr. Alderman *Wood.*] Would you advise the Commissioners issuing warrants on the application of any other person except those of their own police

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officers; that is, would you make it on the application of any individual or individuals not of the police?—I should confine it to their own officers.

80. Perhaps you think, if their own officers witness an assault, where it is with violence, and where a summons is not sufficient, you think it a great convenience that the officers should apply to their own superiors to grant those warrants?—Yes, I think it would be a great convenience.

81. Can you tell us whether you know what interest the persons serving the warrant have; first of all, he, as an officer, is better paid than the Metropolitan Police?—He is.

82. Has he an interest in serving the warrant?—He receives for serving according to the distance. I may here mention, that I think there should be some exception in the case of Bow-street Police Office, with regard to the having constables supplied from the Metropolitan Police. Applications are frequently made by persons in the country to the chief magistrate, for a constable to be despatched upon some urgent business. If the Metropolitan Police officers are to be attached to Bow-street, the magistrates should have the same power of despatching them into the country which they have at present.

83. *Chairman.*] Would it not be most advisable to have all applications of that kind referred to the Commissioners, who have a much wider selection of men to furnish the demand you have spoken of, and would it not thereby prevent that interruption to the system of consolidation which is desired?—The officers attached to the police offices would be more expert in the detection of crime than the common Metropolitan Police officers; they are more practised in that particular business, more exercised in looking for and searching out proofs, and therefore more expert in tracing and detecting crime, than the common Metropolitan Police officer.

84. Is it not the fact, now, that the constables of the police force are very extensively and usefully employed in the detection of felonies, both in town and country?—They are not sent into the country for that purpose.

85. Are they not sent by the Commissioners?—I think not; I am not aware of such a thing. It is understood by the Commissioners that they are not to be sent, in case of offences committed in the country, without a direction from the Secretary of State. I have no doubt the police officers attached to the police offices out of the Metropolitan Police would, from having more constant experience and practice in this particular kind of business, become much more expert than the common police officer, in the detection of crime.

86. They would not be less expert were they part of the police force, and attached to the office in the way recommended by the Committee?—No, these men would be equally expert. I may add, that unless the chief magistrate is to have the power, in case of an application from the country, to despatch one of the officers attached to his office, there would be great inconvenience.

87. Have you considered at all the present distribution of the offices in the metropolis, in reference both to population, the districts attached to them, and the business discharged at the offices severally?—I have not exact knowledge of the relative extent of the business of the several police offices with reference to population. With respect to situation, the police offices might be more conveniently placed than they are at present.

88. Do you think that an alteration of the arrangement might lead to a reduction of the number of offices in the metropolis or not?—I do not see at present how the number of offices can be reduced. The Secretary of State was very desirous of reducing one on the eastern side, Whitechapel Office, and for that purpose kept two magistrates' places vacant for a long time; but many strong representations being made, and memorials presented from the different parishes in the neighbourhood, the plan was given up.

89. Are you aware of the population attached, for instance, to the district of Union Hall?—I do not know the population of that district.

90. Assuming I am correct in stating that the population attached to that district amounts to nearly 300,000, and that I am also correct in stating that the population attached to the district of the Thames Police, for instance, is only 22,000, keeping in mind also the character of that population, do you not think, if three magistrates can discharge the duties of the one, that clearly the same number is not necessary to discharge the duties in the other case?—I really am not sufficiently acquainted with the extent of the business, or the time the business occupies, in those two offices, to form a satisfactory opinion. That information can be supplied by the magistrates, and better than I am able to give.

91. You think it not possible, by a re-distribution of the offices with respect to population

population and business, to absorb the smaller districts into the larger, or to unite two small districts?—I should doubt it indeed. *S. M. Phillipps, Esq.* 24 April 1837.

92. Are you not aware that the Town Hall, Southwark, is close to the Union Hall office?—Certainly.

93. Do you not think, therefore, that that presents one means of altering the position of at least one of those offices?—Unquestionably the position of that office might with advantage be altered.

94. Then, assuming the Union Hall Office was removed much farther west, and keeping in mind that the Queen-square district is by no means a populous or extensive one, do you not think that would enable you to unite the Queen-square district with the Union Hall district without inconvenience to the public?—I think it would be very desirable to remove the Union Hall Office westward, and to remove also the Queen-square Office westward, towards Kensington; but not to put an end to the Queen-square Office, which has a considerable district. It is much wanted towards Kensington, where, for the convenience of the Metropolitan Police, magistrates held petty sessions.

95. Do you know the population of Queen-square now?—Not exactly. I doubt whether that office can be conveniently absorbed; it should be in a different situation.

Veneris, 28° die Aprilis, 1837.

MEMBERS PRESENT:

Mr. Fox Maule.	Mr. H. Elphinstone.
Mr. Ross.	Mr. Marshall.
Lord Hotham.	Mr. Robert Clive.
Mr. Estcourt.	

MR. HAWES, IN THE CHAIR.

Samuel March Phillipps, Esquire, again called in; and further Examined.

96. *Chairman.*] WILL you inform the Committee whether there are any proposed amendments of the Police Act which are likely to be introduced from your office this Session?—There would be two or three alterations. *S. M. Phillipps, Esq.* 28 April 1837.

97. Will you state what they are?—One with respect to gaming-houses, which is the most material; and one or two others of less importance. I do not at present remember any very material alteration, except that concerning gaming-houses.

98. No alteration in the law, and nothing to improve the administration of justice?—None to improve the administration of justice in the police offices.

99. It was not in contemplation, then, to extend the jurisdiction, in any way, of the magistrates?—That was not intended.

100. Have you brought with you a statement of the population attached to the districts of the police offices, as well as an account of the business done at each office respectively?—I have a return of the number of parishes and of the population in the district of each office.—[*Paper* (B.) *put in.*]

101. It appears, then, that the population of the Bow-street district is 64,000?—If that is the number in the return.

102. Can you now state to the Committee the number of cases heard by the magistrates per day during any particular period?—Here is a return of the number of cases heard in the police offices for the last two months.—[*Paper* (C.) *put in.*]

103. Can you give the Committee the average number of cases per day during that period?—The average daily number of cases heard at Bow-street appears to have been 25; in Queen-square Office, 16; in Marlborough-street Office, 14; in Mary-le-bone Office, 24; in Hatton Garden Office, 58; in Worship-street Office, 38; in Whitechapel Office, 33; in Union Hall Office, 42; in Thames Police, 13. The Committee are not to suppose that this is the whole of the business done at the several police offices; in the Bow-street return the magistrates state, that "the time of the magistrates is further occupied by frequent applications for advice and assistance, which, after having heard the facts, they judge whether they have any jurisdiction or not, and act accordingly." It is quite impossible to make any return under this head. The number of signatures of affidavits and certificate attestations of recruits, may probably be from 2,000 to 2,500 within the period. I find another statement by the magistrates of the Queen-square Office; "in addition

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dition to the above, the time of the magistrates is occupied in attestation of recruits." In another return it is said, "We beg to observe, that much of the magistrates' time is every day occupied in attending to applications and other matters, of which, from the nature of them, no register is or can be kept." In another, that of Hatton Garden, it is said, "There is no account kept of applications to magistrates when no proceedings have been heard, as for warrants, summonses, to offer bail, or for assistance, when there is no jurisdiction, which applications are very numerous; nor for a large amount of other miscellaneous cases." I see another is to the same effect. The same remarks must of course apply equally to all the other police offices.

104. Do you know the hours which the magistrates are required to attend under the Act?—From 10 in the morning till 8 in the evening.

105. Do you know the hours which are actually those of commencing and terminating the business of the office?—The hour of opening the office is 10; the magistrates, I understand, meet at 11, and 7 in the evening.

106. So that in point of fact they have curtailed the hours of attendance, as named in the Act of Parliament?—I believe they sit as long as there is business.

107. They never begin their business till 11 o'clock?—I understand the magistrates begin at 11 o'clock; before which the business is arranged and prepared for them by the clerks of the office. The office opens at 10, and business begins at 11 o'clock.

108. It may be inferred therefore from that circumstance, that more business could be discharged if there were business to be done?—Yes.

109. Looking at the character of the population in the Union Hall district, which comprises some of the worst parts of London, and looking at the population in the Marlborough-street, which comprises some of the best parts of London, and the business done at each office respectively, do you not think some inference may be drawn from that, that there might be a better distribution of offices, if not a reduction of number?—I presume you mean with respect to situation.

110. With respect both to situation and number?—Supposing the number of offices to be continued as at present, and new situations were to be chosen to suit the public convenience, I think better and more convenient situations might be selected for several of them.

111. Now, might not the police business of the Thames Police Office, for instance, be discharged, without any inconvenience to the public, at the Lambeth Office, looking at the return you have just presented, giving an account of the business discharged there?—If one of those two offices were to be taken away, I think it would be more convenient for the business of the river police, which is the chief part of the business of the Thames Police Office, that the Lambeth-street Office should be taken away, and that the Thames Police Office should continue. When the Secretary of State was considering whether one of the offices on the eastern side of the metropolis could be discontinued, it was much considered whether it would be better, or not, with reference to public convenience and also with reference to expense, to discontinue the Thames Police Office or the Lambeth-street Office and the result was, after much inquiry on the subject, that it would be better to discontinue the Lambeth-street Office and to leave the Thames Police Office.

112. In that case, then, one office might be abolished without inconvenience to the public?—So it was thought at first, but afterwards, in consequence of representations and deputations from most respectable tradesmen in the neighbourhood, and from parish authorities, and in consequence of inquiries made (as I before have stated), the Secretary of State was of opinion that the public would be inconvenienced if the Lambeth-street were to be discontinued.

113. In what way would it be a public inconvenience?—Chiefly on account of the distance which the inhabitants would have to go for the assistance of the office.

114. Do you think it is that inconvenience which ought to have prevented a saving of so considerable an amount as the abolition of the office?—The offices are established for the benefit and convenience of the public, and for no other reason. The expense of a police office is little above 4,000*l.* a year; and if it appear to be the general wish of the public, and for the convenience of the public, in any particular part of the town, that one office should not be removed, that would be a very strong reason, I presume, with any Secretary of State, not to put an end to the existing establishment.

115. But if a considerable saving could be effected by the reduction of one or two offices, and that saving could be applied to the improvement of the police generally of London, would it not then assume a public character, and become a question

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a question worth the consideration of the Secretary of State, unless there were other local considerations that were paramount?—Certainly, it would be a considerable object either to reduce the number of offices or the number of magistrates, if they can be reduced conveniently. So far as the personal convenience only of the inhabitants is concerned, the public might be benefited by having a greater number of offices than even the present number; but that would increase expense, and make an addition of magistrates necessary. There are two ways of considering the question of reduction; one, by the reduction of offices, the other by the reduction of magistrates. If you reduce the number of offices, you increase the quantity of business in the offices which are left; and it might perhaps be necessary to have in some offices more than three magistrates. It may be doubtful, if the Whitechapel Office were taken away, whether the business of the extensive district which must be added to the Thames Police Office, together with the river business, could be conveniently managed by three magistrates.

116. Your opinion is, that the number of offices could not be reduced with reference to the convenience of the public?—The number of magistrates continuing the same, and the present practice of requiring the presence of two magistrates also continuing, I do not see how the number could be conveniently reduced; the offices might certainly be more conveniently arranged; but I must beg the Committee to understand, that I give a very general opinion upon this subject, and from not being intimately acquainted with the details of business in the police offices, I cannot, satisfactorily to myself, give a very decisive or strong opinion. The magistrates themselves would supply, on all these matters of detail, much more complete information than I can give, and would be better able to assist the Committee in coming to a sound conclusion.

117. You think the objections raised by the inhabitants in the neighbourhood of the Whitechapel Office, to its removal, were founded chiefly on local and personal considerations?—Yes, I believe so.

118. With regard to the number of magistrates at each office, provided the law were altered so as to give to one magistrate in all cases the jurisdiction now exercised by two in many cases, do you think that would permit of a reduction of the number of magistrates?—I think it would.

119. Would it not also furnish a fund by which you might increase the salaries of the police magistrates, and hence require, perhaps, higher qualifications than those which have been required to fill those situations?—Certainly; there would be a saving of the salaries of nine magistrates.

120. What is your opinion of such an alteration of the law, and such an augmentation of salary?—I think it would be a good alteration, to extend the jurisdiction of a single magistrate to many cases in which at present two are required, and to increase the salaries of the police magistrates.

121. Is there any thing which you have to submit in the shape of heads of a Bill?—No; I am giving my own opinion only; I am not aware of the Secretary of State at any time having formed any decisive opinion upon the question of reducing the number of magistrates. If I am asked the question, my opinion is, that the number of magistrates may be reduced, if one magistrate is allowed by law to act where two magistrates are now required.

122. Were the number of magistrates reduced to two under the circumstances proposed, and one magistrate to sit alternate days, might not the police offices be put more on the footing of courts, and their proceedings in some degree rendered more analogous to them?—I do not see how the proposed alteration would have that effect.

123. Suppose a single magistrate to be sitting simply for the discharge of police business, with the usual distinctions of a member of the bar, do you or do you not think that would tend to improve the mode in which justice is now administered in the police offices?—According to the present system, sometimes two sit together, sometimes one; but they do not sit as barristers, that is, they are not in the dress of barristers. I do not see how the change of dress could make the slightest alteration.

124. Suppose the same alteration were to take place in police offices which has taken place in the courts of Commissioners of Bankrupts, where a single Commissioner sits in his bar dress, and discharges the business which is brought before him, do you not think it would lead to as much improvement in the mode in which business is conducted in police offices, as it has led to improvement in the manner in which the Commissioners of Bankrupts discharge the duties of their office?—I do not believe the change of dress would produce the least

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least alteration whatever; the alteration must be made by other means of more importance.

125. Do you see any objection to a single magistrate sitting to discharge the duties of a police magistrate in lieu of two?—There may be some few cases in which it might be desirable not to alter the law in this respect, and still to require the presence of two magistrates; but in a great variety of cases, and generally speaking, I have no doubt the jurisdiction now given to two might safely be entrusted to one.

126. What cases do you think call for the attendance of two magistrates?—I can hardly answer off-hand that question. The Committee are aware that in assaults two are required at present. I am not prepared to say that the alteration should be made in this instance. But in a great number of cases, where the decision of two is now required, I think the decision of a single magistrate would be sufficient.

127. Is the power now given to two magistrates founded upon any principle?—I conclude the principle must have been this, that two magistrates are supposed to have more intelligence and information than one, and fitter to be trusted; but the principle has not been acted upon in a great variety of cases.

128. Mr. *Elphinstone.*] Your observations I suppose apply to the Metropolitan stipendiary magistrates; you do not mean to alter the law generally with regard to the unpaid magistrates throughout the country?—I am giving my opinion only with reference to the Metropolitan Police magistrates.

129. *Chairman.*] You prefer, then, the judgment of two magistrates to one in certain cases?—In some cases the judgment of two may be necessary; but when the business can be safely and satisfactorily done by one, it would be more convenient that it should be so done, than to require two, as at present.

130. Would there be any objection to its being required that the magistrates should be barristers of seven years' standing, considering that under the alterations proposed there would be an augmentation of salary?—I think no objection.

131. Is it necessary to require a qualification by estate?—No, such a qualification should not be required.

132. Would you extend the jurisdiction of police magistrates at all in civil cases?—I think it might be for the convenience and benefit of the public to give them jurisdiction in some civil cases. I observe in the evidence laid before the last Committee, several magistrates mentioned cases in which it would be convenient for them to have power of deciding; I concur with them in that opinion.

133. Suppose the summary jurisdiction of magistrates was extended over all cases of simple larceny, keeping in mind the qualifications to be hereafter required for a police magistrate, do you think that would be a beneficial alteration, as far as the metropolis is concerned, with reference both to the prevention of crime and the diminution of the committals to gaol?—I am disposed to think, in cases of simple larceny, where property stolen is of small amount, and the offences are committed by young offenders, it might be desirable to give authority to police magistrates to try such offenders, to convict and to punish, without the intervention of a jury.

134. You would then limit the age of the parties to be so tried, and the value of the property?—I think it might be better to limit the power to those cases. If it should be thought hazardous to extend the jurisdiction of magistrates to the trial of such offences, it may be for the consideration of the Committee, whether all risk would not be obviated by allowing the prosecutor the option of having the offender commited for trial to the sessions. I think it probable, in cases where the property stolen is of small amount, and the offender is young, the prosecutor would not wish to exercise the option; but it might be offered. There would be some check on prosecutors if such an option were allowed; for if the case were to be tried at the sessions, the judge or chairman would probably refuse to allow the costs of prosecution, if he should be of opinion that the case should have been tried by the police magistrate.

135. Would you give any such power, then, to the offending party?—Certainly not.

136. Would it not be extremely difficult to ascertain the age of the parties in each case?—There would be some difficulty.

137. And the value of the property stolen furnishes no criterion of the amount of crime committed, does it?—Certainly not any precise criterion; but where the property stolen is of small value, prosecutors, rather than bear the expense, the inconvenience and trouble of attendance at the sessions, might be willing to have the case determined by a police magistrate.

138. Would

138. Would you at the same time limit the power of bailing in certain cases?—I think so.

139. In lieu of committing to prison either for re-examination or for trial?—Yes.

140. Mr. *Estcourt.*] Is the opinion which you have now expressed formed after mature consideration of the subject, and if so, have you formed the outlines of any plan of an enactment to carry your views into execution?—I have more particularly attended to the subject since it was mentioned to me a few days ago, with reference to my attendance before the Committee; but I have no plan of a Bill to propose. That would require much time and consideration.

141. *Chairman.*] Supposing juries were to be dispensed with in the cases mentioned, namely, cases of simple larceny, and the summary power of magistrates were extended over them, do you not think, provided there were objections to the abolition of trial by jury, that some mode of appeal might be adopted so as to secure the criminal what might be thought a fair trial, should it be required?—I think a police magistrate ought to be capable of trying cases of simple larceny without any difficulty; and if they are fit to be trusted with such a power, it would be unnecessary to give an appeal.

142. With regard to the extension of the civil jurisdiction of the police magistrates, have you any opinion to offer to the Committee?—Where property of small amount is wrongfully detained, or wages not paid, they might have jurisdiction.

143. There is a mode of recovering the wages of agricultural labourers, but none as to domestic servants?—In the last case, magistrates have not jurisdiction.

144. You would extend the power to which I allude, to the case of domestic servants?—Yes, I think it might be safely extended.

145. Mr. *Elphinstone.*] As such a power exists in Scotland, it would be advisable to extend it to this country?—I think so.

146. *Chairman.*] A great source of evil arises in London by the detention of houses after notice to quit?—So I understand.

147. In that respect likewise perhaps the power of magistrates might be extended?—That is another case to which it might be extended.

148. And as to wilful damage done by tenants, over which there is but little control at present?—I think so.

149. Would you give magistrates any power to whip young offenders at once, and discharge them?—If they have jurisdiction to try simple larcenies, they should have the power now given to a judge, to order whipping as a punishment.

150. It being understood that you would only extend this power to properly qualified stipendiary magistrates?—I am speaking only with reference to the police magistrates.

151. There was an Act, I believe, introduced, giving magistrates power to mitigate penalties?—There was a provision to that effect in a Bill.

152. Would it not be desirable, in the present Act, to introduce a few clauses embodying these improvements that you have expressed your opinion upon?—They might be introduced into the Police Bill, if determined upon and settled; but I think the best course will be to introduce a temporary Bill in the present Session to continue the Police Act, which is about to expire, to the end of the next Session; the alterations suggested, if they are to be adopted, will require a great deal of careful consideration, and ought not to be got up in a hurry.

153. Would it not be desirable to have more accurate statistics of crime, with reference to the metropolis?—I think the table prepared at present in the Home Office, with respect to persons charged with offences, is as extensive and as complete as it can well be made. It gives great trouble, and occupies the time of a very clever clerk the greater part of the year, working even out of office hours. We cannot do more upon this head with our present establishment.

154. Does any table proceed from your office at all analogous to that—[*handing it to the Witness*]?—A great deal of this does not apply to the Home Office, and could not be prepared there. Upon the face of the table, I perceive it relates particularly to the Metropolitan Police. For instance, there is a column as to "Places where the greatest number of offences are committed;" we have no knowledge of such places. Another as to "Offences prevented;" of course that must apply to the Metropolitan Police. Another as to the "Number of cases where offenders were apprehended at the time;" that cannot relate at all to the Home Office. Again, another column, as to the "Number of cases where the offenders were apprehended subsequently;" we have nothing to do with that at the Home Office. Another as to the "Number of cases where the offenders

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escaped after information;" of course we have no information on that subject. So of others.

155. As the Home Office is the central point to which all criminal information is transmitted, do you not think a more comprehensive digest of the state of crime might be presented to the public than is now presented?—We have not the means of doing it; no table of this description could be prepared at the Home Office; the Metropolitan Police Commissioners prepare it; they are the only persons who can prepare it; I must say, I do not consider it of any practical use or benefit; if the Home Office were to set about such a work, we should get the whole of the information from the Metropolitan Police Commissioners.

156. That is to say, you would digest their information into yours, and make a more comprehensive statement?—No; it ought not to be mixed up with our criminal tables; it is perfectly unconnected and distinct in its nature; our tables relate to different matters.

157. You have no account to show the locality in which crime is great or small?—Certainly, we have, in our criminal tables.

158. Is that shown?—There is an account of crime for every county in England, not, of course, as to particular spots or places in any county.

159. Mr. *Elphinstone.*] In the different police offices, do the magistrates keep a record of all the cases that come before them?—They keep entries, I believe, as to all cases in which any thing is done by them as magistrates; I must refer to them for such information. There is a great deal of business which may occupy considerable time, but on which nothing is done; I cannot say whether that is entered.

160. *Chairman.*] With regard to the issuing of warrants, you suggested that the Commissioners should exercise the power which they have for the apprehension of offenders?—I suggested that, because it appeared to me to be the only remedy for removing the inconvenience of which the Commissioners have complained.

161. And you are still of opinion that the issuing of warrants is not at all a judicial act?—I should say that the mere issuing of a warrant, nothing further being done and no inquiry made upon it, is not a judicial act.

162. Do you not think it advisable that there should be the same distinction maintained between the magistrate and the Police Commissioner and his subordinates, as now exists between the judges and the sheriffs, that both the sheriff and the Commissioner should be responsible, and that all acts partaking in however slight a degree of judicial acts, should be as much as possible confined to magistrates?—I think the general principle is right, that the judicial business should go to the magistrates at the police offices, and that the administrative or executive should go to the Commissioners; but, as I said before, I do not consider the mere issuing of warrants, and then sending the apprehended party before a magistrate, to be in any respect judicial or inconsistent with the principles of the Metropolitan Police; and it would be of great use, in my opinion, for the purpose of removing the inconvenience complained of, if the Commissioners were to issue warrants.

163. Would there not be some inconvenience in sending officers from all parts of London for warrants?—The cases where warrants are required are extremely few.

164. Is there any good reason why the magistrates should not place their warrants in the hands of Metropolitan Police constables, particularly where they are known to be men of character?—The magistrates have a discretionary power, and they use it; if I were a police magistrate myself, and had officers attached to my office, whether from the Metropolitan Office or not, and if I were called upon to issue a warrant, I should prefer issuing it to one of my own officers, with whom I am acquainted. I am convinced the greatest inconvenience would arise from forcing magistrates to issue warrants to constables not attached to their office.

165. Would it not be desirable that warrants issued by police magistrates should run through the city, and *vice versâ*?—Most desirable; the city constables ought to be empowered to execute their warrants in the county, and the county constables to execute their warrants in the city.

166. Would there not be a considerable public advantage, in point of fact, in consolidating the whole judicial and executive police of London, that is to say, the whole of that tract which is called the metropolis?—I think so; I should mention that it was intended to insert a clause in the Police Bill for giving power to constables to execute warrants in the city, and *vice versâ*.

167. I believe

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167. I believe The King in Council has power to extend the police to certain parishes?—Yes.

168. But on the application of the parish?—Yes.

169. Would it not be better, considered as a matter of public interest, that that power should exist independent of the application of parishes, and that the state of crime and the necessity of its prevention, should rather govern the extension of the police than the interest of individuals, which is sometimes affected simply by the police rate, and not by the state of crime?—I think the rule is best as it is now settled by the Metropolitan Act; such an extension to out-lying parishes would produce, of course, a very great increase of business.

170. Provided country parishes were confined, in reference to the mode of rating and the amount of rating, do you think there would be any objection to give that power?—It would be extending very considerably the business of the office; and then the question arises, whether the business would be done with the same despatch, the same ability and correctness.

171. You do not object to it on principle, but simply in reference to the power of the individual to discharge the extended business?—Just so; a police, for efficiency, may be too extensive and overgrown. I may here mention, with reference to a question put to me on the former occasion, respecting the number of warrants issued at the police offices on the application of the Metropolitan Police constables; I have a return, as to the whole number so issued for the last two months, from which it will appear that the inconvenience complained of must be exceeding slight, if any at all. The whole number of warrants which have been issued by all the police offices for the last two months, on the application of the Metropolitan Police officers, amounts to not more than 18.—[*Paper* (D.) *put in.*]

172. But understanding generally that magistrates are not able to place warrants in their hands, do you not think that tends to discourage such applications and therefore the number forms no ground for drawing any inference from it?—You would be surprised to know how very few warrants issue from the police offices. In cases of felony, a warrant is scarcely ever issued; the apprehension take place in almost every case without a warrant.

173. Mr. *Estcourt.*] Can you state what number of warrants, during the same space of time, have been issued on the application of other persons?—I have not a return of the number; it will be found very small. I will procure a return immediately.

174. Looking at that scheme of statistics of crime, which has been shown you by the Chairman, do you see any difficulty in substituting that for the scheme now adopted, except the increased labour that will be required in making it out?—It does not relate to the Home Office; it is entirely the business of the Metropolitan Police, and totally different in its nature from our criminal abstracts.

175. Is not the Metropolitan Police under the jurisdiction of your office?—Yes, it is; but we could not get the requisite information; we must depend upon the Commissioners for all the materials, and I should have no means of knowing whether the information received from them is correct or not. The table is made out by them as it ought to be. If the Secretary of State had required such a statistical plan to be prepared, he would have given directions to the Commissioners to prepare it, as part of the business of their office, and peculiarly belonging to them. They have all the information requisite for compiling it; we have not.

176. Supposing that plan to contain all the heads of the business that is brought before the police magistrates, could not they fill up such parts of those columns as appertain to their business, so as to enable the clerks in the Home Office to make one general statement applicable to the whole of the police of the metropolis?—Certainly not; the business mentioned in the several columns of the table which has just been shown to me, relates no more to the police offices than it does to the Home Office.

177. When you say that the business does not relate to the Home Office, to what office then do you consider the Metropolitan Police to belong?—To the Home Office.

178. Has not that as much to do with the police of the metropolis as the office of Bow-street, or any other of the police offices within the jurisdiction of the Home Office?—Certainly.

179. Be so good as to state then, why, in your answer, you say that the statement which has been exhibited does not appertain to the Home Office, but belongs

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belongs to the Metropolitan Police?—For the reason I have mentioned; because the business which is mentioned in it belongs immediately and exclusively to the Metropolitan Police, and is managed entirely and exclusively under the orders of the Commissioners. The table is constructed on information which is in their hands, in theirs only, and not in the Home Office. I take for granted it is correctly drawn up; but whether it is or not, we have not the means of judging at the Home Office.

180. How does the Home Office obtain this information by which it makes out the statement that is actually published there?—By returns from clerks of assize, clerks of the peace, and other officers.

181. Is no return made from the Metropolitan Police of the offences of which they take cognizance to the Home Office?—There is a return made to the Home Office, which is prepared by the Commissioners of Police, upon a plan settled at the Home Office.

182. In the same way as the other returns are prepared by the police magistrates?—No; it is business quite of a different kind, of a nature preliminary to the business of the police magistrates. The tables which are prepared by the Home Office relate to business after the apprehension, such as commitment, trial, conviction, acquittal. The tables which are prepared by the Commissioners of Police relate to matters previous to apprehension.

183. Would there be any difficulty if an application was made to the Home Office for information respecting the preliminary matters that come within the cognizance of the Metropolitan Police, in obtaining that through the Home Office?—It might be obtained through the Home Office, but from information received at the Home Office from the Commissioners of Police.

184. Is not that information deposited in the Home Office?—Some is, a great deal is not. We receive some information in the form of tables; but if we wanted any particular information as to any particular case, we should send for it to the Commissioners.

185. And there would be no difficulty in doing that?—None; the Commissioners would always be able to supply the information.

186. Mr. *Elphinstone.*] Are similar tables returned to the Home Office from the police establishments in Dublin, Edinburgh, Glasgow, or other large towns where there are stipendiary magistrates?—No.

187. Has the Home Office any accurate account of the convictions at petty sessions throughout the kingdom?—No.

188. With a view to the accurate investigation of crime throughout the country, would it not be desirable to obtain such a return?—With that view it might be useful to have a return from the different petty sessions of cases in which the magistrates summarily convict for offences. I do not see any advantage in extending the return beyond that limit. Such a return as that, even so limited, would give a great deal of trouble to the magistrates and clerks at petty sessions, in large towns especially. The clerks must be paid for their trouble in making the return, and we have no funds in the Home Office for paying them.

189. Mr. *Marshall.*] You have expressed an opinion that some change might be made as to the position of the police offices in London; can you state to the Committee generally what change you would propose to make?—The Union Hall Office might be removed to a better situation westward.

190. Which way?—Towards Lambeth-road; that has been recommended by the magistrates as a very desirable situation. Queen-square Office also might advantageously be removed westward; a good situation for that office would be about Grosvenor-street West. But the Committee should bear in mind, that there is a great difficulty in altering the situation of police offices. The respectable inhabitants of the neighbourhood generally resist the building of a police office. Worship-street Office, lately rebuilt, was to have been placed near Finsbury-square, and a contract was actually made for land; but the inhabitants opposed the scheme, and, on application to the Court of Chancery, obtained an injunction, on the ground that it would depreciate the value of property in the neighbourhood. In another instance, also, it was considered very desirable to remove the situation of a police office; but immediately that it was known, the inhabitants threatened to apply to the Court of Chancery for an injunction, in consequence of which the plan was given up.

191. Do you think it would be expedient to continue, or to abolish, the evening attendance

attendance of the magistrates?—I think it might be abolished without inconvenience to the public: the magistrates, in that case, might sit longer in the day. *S. M. Phillipps, Esq.*

192. How many hours in the day?—Till five o'clock. Before the business closes, I beg to deliver in, with reference to a question put to me on the former day as to the expense of the police offices, a Statement, showing the exact amount of the expense of the offices, and of all the charges incident to the police. —[*Paper* (A.) *put in.*] 28 April 1837.

Lunæ, 1° die Maii, 1837.

MEMBERS PRESENT:

Mr. Hawes.	Mr. Howard Elphinstone.
Lord Hotham.	Mr. Estcourt.
Alderman Wood.	Mr. C. Ross.
Mr. Clay.	Mr. Marshall.
Mr. Fox Maule.	

MR. HAWES IN THE CHAIR.

Sir *Frederick Adair Roe*, Bart., Chief Magistrate of the Public Office, Bow-street, called in; and Examined.

193. *Chairman.*] WILL you state to the Committee what are your duties, beyond those of the other police magistrates?—My duties, in addition to those of the other police magistrates, are, to attend at the Home Office frequently, I will not say daily, because I use my discretion about it, whether I think the Secretary of State will want me; about the termination of the sitting at Bow-street, that is about three o'clock, I go down and see the Under Secretary of State, or the principal Secretary of State, if occasion requires it; the only other duty is to attend upon the King when His Majesty goes upon any state occasion, or has a state reception. Sir *F. A. Roe.* 1 May 1837.

194. What are the duties which, as magistrate, you discharge at the Home Office?—It depends entirely upon chance; I see the Secretary of State, if I have any thing to communicate, or the Under Secretary always, and he tells me whether he has any occasion to consult me, or to make any communication; a variety of questions may arise, often perhaps more colloquial than strictly official, as to matters of law; he, perhaps, asks me my opinion as to matters of police; but it is hardly definable; the subjects are very general and numerous.

195. What are the matters of law, or what are the communications of a police nature, or of a public nature, which require the attendance of the chief magistrate at the Home Office daily?—Perhaps it is hardly possible to define. The communication which may take place between the Under Secretary of State and me, may be upon matters purely confidential and in the way of conversation, which a man at the head of the department may have with another, who may be supposed to be acquainted with many of the points which come under the consideration of the Home Office; it very much depends upon what is the business immediately before him, and whether he chooses to say, "What do you think of this or that."

196. Does it relate to the apprehension of offenders?—Not at all, except in such matters as may come before me or the office.

197. What do you mean by matters that may come before the office?—It very frequently happens that petitions are sent by persons who have been committed from ours or other offices, or have been convicted; in that case, very likely the Under Secretary of State asks me, as it saves a great deal of time, my practical opinion of the law, upon a particular point; so that he is satisfied in a moment how the petition applies, and how the law bears upon the case.

198. Is the Committee to understand that it never relates to the apprehension of offenders of any description?—It is impossible for me to say that it never relates to any such thing; I should say the conversation which, during the five years I have been chief magistrate, has passed, may have embraced almost every subject which we may consider a matter of business.

199. Matters of police, do you mean, by matters of business?—Not exclusively.

200. Then what are the matters of business, independent of police, which require the daily attendance of the chief magistrate at the Home Office?—It

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may happen that the chief magistrate may go down for several days together, and there may be nothing which should positively have required his attendance; again it may happen for several days that the Under Secretary of State should think there are some points connected with his department upon which he would wish to consult me, or upon which he thinks my opinion or practical knowledge of the law might be of service to the Government.

201. Will you explain to the Committee in what way your practical knowledge of the law is to be made of service to the Government, if it does not relate in any way to the apprehension of offenders?—Thousands of things may happen upon which it may be desirable for the Secretary of State to ask me a question; a thousand things which a man who fills my situation (who has, at least, a desire to be very well acquainted with the criminal law of the country) may be able to give an opinion upon, but which I can hardly define.

202. Will you give an instance of such cases as most ordinarily occur to require your opinion?—It is very possible that when a new Act of Parliament is going to be introduced relating to criminal matters, the Secretary of State may put it into my hands, and ask, off-hand, what my opinion is, how it would operate, how it is worded, and what the effect of it would be?

203. An Act of Parliament relating to matters of police?—To general matters of criminal law; he may do me the honour to think my knowledge is not absolutely confined to the character I strictly fill.

204. The Committee are to understand then it in no way relates to the apprehension of offenders?—I beg your pardon; if a communication had been made to the Secretary or Under Secretary of State respecting an offender, and it was desirable to take immediate steps to effect that, there would be an immediate communication to me.

205. In that case you are sometimes consulted as to the person or persons whose case is coming before you judicially as a magistrate?—I naturally should be; every magistrate may be liable to be consulted upon a case which may afterwards come before him ministerially or judicially.

206. But it is more particularly your duty, as connected with the Home Office, to receive, occasionally, instructions with reference to offenders, with a view to their apprehension and punishment?—No; the number of offenders with regard to whose apprehension I should receive instructions at the Home Office would be very small, for it would be only offenders upon some matter relating to the state, or who have been guilty of any threats towards the King, or royal family or any matters of high importance.

207. As a general principle, do you think it desirable that a magistrate should be a party to instructions for the apprehension of offenders, and also a party to getting up evidence with a view to his conviction, previous to his adjudication upon the case?—The Committee are asking me my opinion upon a very important subject, and one which affects very materially the existing law of this kingdom, as it has been for these three centuries, and therefore I should most respectfully request, if it is their wish that I should give my opinion upon it, that I should be allowed to consider so very material a question, which I confess I did not contemplate being asked to give an opinion upon off-hand.

208. Mr. *Elphinstone.*] Have you considered whether it would be advisable to separate the administrative from the judicial duties of the police magistrates?—I have not considered it with a view to such a suggestion being carried into effect.

209. *Chairman.*] Then is the Committee to understand that you would not wish to give an opinion upon the expediency of separating altogether the judicial duties of magistrates from the executive duties of police, as they have hitherto been exercised by them?—I am bound to give my opinion upon any subject which the Committee are pleased to inquire into; but I beg respectfully to say, that it is so very material a subject that I rather wish not to commit myself by giving an off-hand opinion, which may not sufficiently embrace all the bearings of the question; it would, as I said, so completely alter the system of law, that I should be sorry not to have considered the subject well before I entered upon it.

210. Mr. *Elphinstone.*] Perhaps, then, you will consider the subject and be prepared to give your answer on a future day?—I shall be glad if the Committee will be pleased more generally to define their object, because, taking the whole duties of a magistrate, which are so very extensive, there are many points upon which his executive share is of little consequence; there are others in which it is

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of the utmost importance; if, therefore, I were to say that the separation would be advantageous or disadvantageous I might commit myself as to the whole, without the subject being fully considered.

211. *Chairman.*] Will you point out some of the executive duties of the magistrates, which you consider of great consequence, as contradistinguished from those which you consider of little moment?—I should say, in all cases of felony, where it is necessary that the evidence, before being in that state in which it is fit to be presented to the grand jury, should be well considered and shaped; that the executive assistance of the magistrate is of most essential consequence for the purposes of justice, and that without his advice, control and interference, a great proportion of very important prosecutions may fail; I may instance here a case in which I myself had 39 examinations, before I could get evidence to commit the prisoner upon. I am quite satisfied, if I had had nothing to do with the executive part, that man would have been, as far as that felony went, at large at this moment; and when I instance one case, I mean to say that the same sort of thing happens every day.

212. At what period of the inquiry as to the guilt of the party do you consider that the advice, control and interference of a magistrate, with a view to a future conviction is most necessary?—From the very first to the very last.

213. Then may not the magistrate, by exercising that advice and control of which you have spoken, previous to committal, and being instrumental in getting up the evidence, and shaping the case as you have described, become biassed by those previous proceedings, and less capable of exercising a perfectly impartial judgment?—I consider that a magistrate must be biassed, or else he would never commit; I apprehend, of all the persons in the world, who are to suppose the individual prisoner is guilty, it must be the magistrate, or otherwise he would not be justified by his oath, or by the law in committing.

214. The committal of course does not decide the guilt?—No; if the magistrate had to decide upon the guilt of the party, it would be of the utmost danger, his being a party to shaping the evidence; when I say decide upon the guilt, I mean if the magistrate were the judge before whom the party was tried.

215. Suppose the police constabulary force were charged with purely executive duties, and had the collecting together of the evidence and the facts of the case, and brought them before the police magistrate for his decision, what practical objection do you see to such a course, leaving the magistrate thereby in a purely judicial character to decide upon the evidence, and the facts brought before him?—That a great many criminals would escape punishment.

216. Wherein do you think that there would be a failure of justice in such a case?—Because I think the superior knowledge of law and of evidence in the magistrate, is essentially necessary for shaping those facts to bring them before the court.

217. But for shaping facts previous to committal, in the first instance, or previous to their being brought before the court subsequently?—For shaping the facts previous to committal; for after the committal the magistrate knows nothing of what is brought forward; no matter that is brought forward subsequently is known to the magistrate.

218. Mr. *Clay.*] In answering the question which you said you would wish to take some time to answer satisfactorily to yourself, you will be pleased to understand that the system towards which the inquiries of the Committee hitherto have pointed, assumes that an agent of sufficient intelligence is to form part of the constabulary force, to be able perfectly to comprehend the opinions of the examining magistrates as to the sufficiency of the evidence to be brought forward at any examination?—Then there would be no separation whatever of the executive from the judicial in that case. The case the Honourable Member has stated, is exactly what the law is now.

219. Is there not this difference, that the magistrate himself gives directions as to the mode in which the executive officer is to follow up further inquiries?—No; he does not give any directions as to the mode.

220. I believe there are still constables attached to the several police offices?—There are.

221. Do not such constables necessarily consult the magistrate upon each step of their investigation, in procuring evidence with respect to any offence, previous to committal?—No.

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222. To what extent are they in the habit of taking instructions from, or consulting, the magistrates, under such circumstances?—I should say that the constables attached to the police office business would stand less in need of consulting the magistrates than the Metropolitan Police constables or the parish constables, because they are, as far as my experience goes, more masters of their business; but they, in common with all the constables, merely receive the magistrate's directions and advice as to the necessity of bringing forward proof of certain facts, without which, a magistrate would not feel there was a case for committal, or a *primâ facie* case of criminality established.

223. Must not the mind of the magistrate be left more free from possible bias, as well as his time and attention be less occupied, exactly in proportion as the executive police are competent themselves, without instructions from him, to follow out the investigation of the evidence as to any given offence?—I cannot admit that a magistrate has any more bias than is natural from the impression made upon his mind by certain facts being proved on oath before him. The more intelligent the executive police officer is, the less will the magistrate's time and attention be occupied.

224. Mr. *Elphinstone.*] When information is received at the police office that some great offence has been committed, such as murder, for instance, the criminal being unknown, what steps do the magistrates take, under the present arrangement, in order to secure the apprehension of the offender?—None, unless application is made by some party, or communication giving some clue to detection, made to us.

225. But in the case of an application being made, what steps are taken?—In the event of an application being made by any person whatever, for instance, supposing a burglary is committed, and a person comes to the magistrate, and says, "My house was robbed last night," I consider that an application; and in that case the magistrate would direct an officer, if no one else was employed, to investigate it instantly. If, on the other hand, a person were to say, "I have employed a Metropolitan Police constable; he is engaged in it;" I should say, "Very well, the moment he can bring any thing before me, of course, let him come." Either one person or the other would be employed. If no one is employed, on an application made for assistance, or, as I have observed, any clue obtained, the magistrate will send his own officer.

226. But if application is made to you, and you employ one of your own officers to investigate the matter, do you give him any instructions?—Not in the first instance. I should say it very frequently happens, that a person may come and occupy some part of the magistrate's time, by going into details upon the subject, and when he does do so, I, and I have no doubt all other magistrates, upon hearing the facts, generally suggest the best means of acting for the discovery of the offenders; the suggestion being more probably made to the person applying than to the officer; for the Bow-street constables know their duty extremely well, and I have hardly occasion to say much to them; but there are many pieces of advice I give to the individual applying, such as not to talk generally about the circumstance, or his suspicions, or the steps taken, and many little hints which I think very conducive to discovery, and which I suggest to a gentleman, or a common man, just in the same way, when he comes.

227. When an application is made to you, what objection would there be to your directing the Metropolitan Police Commissioners to employ their officers in the investigation?—No objection, except that perhaps my constables are cleverer men.

228. *Chairman.*] What is your opinion as to the expediency of magistrates interfering and shaping the case, when the offence partakes of a political nature?—In no case, political or private, will any magistrate interfere to travel out of the law; but he must in any case put it into a shape to bring it before the judges. I am quite sure the Committee are aware, from their experience as country magistrates, or perhaps also in London, that the judges are in the habit of being extremely strict with regard to the depositions transmitted to them, and they have not scrupled at times to find great fault at matter being put in the depositions which was improper. They have thought on other occasions the depositions not sufficiently full, and therefore confidence is placed in the magistrates by the law of the land, and it is expected of them that they will send the case before the grand jury in a way perfectly fit to be presented afterwards to the court. But in no case does any magistrate, unless he would render himself liable to a criminal information, make up any evidence or omit any, except that which the law requires.

229. How

229. How many officers are now attached to Bow-street?—There are nine at present.

230. What are their duties?—Their duties are to be in attendance upon the magistrates, and to receive their orders, and to go upon any services which may be required of them by persons making applications for assistance.

231. Are they much engaged upon special services in the country?—Very much.

232. Have they been, since the establishment of the Metropolitan Police?—Yes, very much.

233. Are they employed as much as they were before?—I was not at Bow-street before, but I should say they have been more employed for the last three years, than the first year I was at Bow-street.

234. Could the Committee obtain a return, if it were called for, as to the employment of the Bow-street officers upon special services, and upon occasions when their attendance is required in the country?—I am not sure that you could have a very accurate one, because I have adopted a different system within the last year or two. I have made a different entry of the disposition of their time; before it was written upon a card, and not so accurately kept; but I have no doubt but the men themselves could make returns, if the Committee require it.

235. Do you know at all the amount of the emolument of one of your officers in the course of a year, arising from special employments?—I have no idea what it is, because one will make three times what another will; but I am happy to say I have got the officers at Bow-street very perfect now, and they are all intelligent men, so I am able to send the greater portion in routine, so that they have a fair chance of equal emolument. My notion is, that a person applying for assistance is entitled to the best assistance; and I always will send the cleverest man.

236. Do you think them generally superior to the men who might be picked out of the Metropolitan Police force?—No; but I think they have greatly improved under us in their mode of doing their duty; I have two men from the Metropolitan Police force who are very clever fellows.

237. With respect to your attendance upon the King on public occasions, what is the advantage of having a police magistrate always in attendance upon the King?—It is the King's command. I cannot take upon myself to say what makes His Majesty command it.

238. It is not a custom, but a command?—It is a custom, sanctioned by His Majesty's command. His Majesty does me the honour to send for me to attend him.

239. You cannot state any public advantage in it, or additional security to His Majesty?—I apprehend the public advantage would be, that if any insult were to be offered to the King, there is a person on the spot who is competent, from his practice and habits, to take those immediate steps in the examination which are extremely material, and prevent a variety of persons from meddling in matters which might be always better investigated by a competent person at once.

240. You think there is no danger of a magistrate, in witnessing such an insult, partaking of any of the angry or excited feelings of the moment?—Quite impossible. The magistrate must do his duty at all times, and he must be a very poor magistrate, if he allowed himself, from his feeling of loyalty, to forget what his duty required.

241. All the duties which such occasions require are wholly in the hands of the Metropolitan Police now?—They are.

242. Do you think they would not be sufficient for the great object which your attendance is required for on those occasions?—I dare say they would do every thing very well; it has been for a length of time usual for the chief magistrate to attend upon the King, and it is His Majesty's pleasure that he should; I dare say the Metropolitan Police would do it very well.

243. Has it occurred to you to suggest any improvements in the Police Act?—Knowing that the Act would expire at the end of this session, Mr. Phillips, the Under Secretary of State has frequently (that is an instance of one of the occasions upon which my attendance is of use at the Home Office) conversed with me upon the subject of any alterations or improvements which might be suggested, and there are some which probably I might have pointed out; but when I understood that this Committee was going to sit, I did not go forward with any suggestions I had to offer.

244. Have you any improvements to suggest to the Committee in that Act?—I may state there was an Act which was nearly passing three years ago, which was called the Justice of the Peace Act, and in that there are many provisions

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which I thought might be advantageously introduced into the Police Act; that is one of the things which has occurred to me; at the same time, there is this consideration, that that Act was one which would have been operative all over the kingdom, and there might be a difficulty in introducing matters into an Act which may be considered, and is, in fact, purely local, which would affect general legislation; and in making a distinction between the authority and practice of magistrates in the metropolis and other parts of the kingdom.

245. Confining the question as at present to the Police Act, the provisions of which are administered by stipendiary and qualified magistrates, that is to say, gentlemen of professional education, could you suggest to the Committee any improvement?—I will turn my attention to that point, and be prepared with an answer on a future occasion.

246. In your evidence taken before the Metropolitan Police Committee, in 1833, I find, in answer to question 1504, "What alteration do you think ought to be made in the law?" you stated, "The only alteration I would suggest is one which I have heard suggested years ago by some lawyers, and I have heard it mentioned more recently; it is giving the police magistrates, while sitting at the offices, but not elsewhere, the power that one of them should be enabled to do any act which by any law in existence requires two;" will you state your opinion upon that subject at the present moment?—I am still of that opinion.

247. If then one magistrate could now discharge the duty occasionally, under various Acts of Parliament requiring two, are you of opinion that the number of police magistrates might be reduced?—I think so.

248. And if the magistrates exercised in all cases a single jurisdiction, do you think their jurisdiction might be extended beneficially to the public, both in civil cases and criminal cases of a petty description?—I think it might.

249. What would be your opinion as to that extension of the summary jurisdiction of the stipendiary magistrates under the Police Act?—I think they might, though singly, be safely entrusted with the summary punishment of juvenile offenders for trifling felonies, and other cases, from the great publicity which attends all the proceedings before magistrates in the metropolis; not making it imperative that they should decide, but reserving the power of sending it before a jury, if they think it advisable.

250. Supposing there was an increased jurisdiction to be given to magistrates, and additional duties imposed upon them of the nature described in the preceding question, would it not be expedient to augment the salaries of the police magistrates generally, so as to insure, when a vacancy occurs, the filling it by men of a high qualification and of some standing at the bar?—Perhaps an interested person ought to feel a delicacy in answering that question, but there is no doubt of the general principle. The better pay, the better men you are entitled to have.

251. Then you think there would be a public advantage, in point of law, in securing the services of men of some standing at the bar?—I think there would be, in many respects, if they were otherwise qualified.

252. In fact, at the present moment, are the barristers who apply for the situation of police magistrates, rarely men of very great practice at the bar?—I apprehend a gentleman in considerable practice at the bar would not solicit the situation. At the same time, the qualifications necessary for an acting magistrate in the metropolis are so peculiar, that it is not always the man who is in the best practice at the bar who makes the best magistrate. There are a great number of qualifications which money will not buy.

253. At present the police magistrates are not called upon very frequently, I believe, to issue warrants to apprehend parties in cases of felony?—Very rarely.

254. In case of search-warrants, I believe, they generally intrust them to officers of their own office?—Yes, almost invariably.

255. Even although the information relating to the felony upon which the search warrant is founded, has been obtained by the Metropolitan Police constables?—When a Metropolitan Police constable, or a parish constable, or city constable, or a private person, comes to us, it is just the same; it would be entrusted to a constable of the office, no matter by whom the information is brought; but if it was brought by a Metropolitan Police constable, or a City constable, or a parish constable, he would accompany the officer executing the warrant; and, the officer executing the warrant, would merely go there for the satisfaction of the magistrates, to see he had not been imposed upon, and that no improper use was made

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of his warrant; he would not in the slightest degree identify himself with the case. He has strict orders not to make himself a witness, and would call in the Metropolitan Police constable or other constable, that had come, to take possession of the property found, and to notice any of those circumstances which might be material, afterwards, to be brought before the court. So that, in point of fact, after the warrant is obtained, the officer is no more a party in the case than if he had never been entrusted with the warrant.

256. Do you think it would be unadvisable to trust the constables of the Metropolitan Police force with such search-warrants?—If there were any reason offered to me in any particular case, that would make it desirable to intrust the Metropolitan Police constables with it, I should never hesitate to make that exception, if it were for the protection of the public; I mean, if the prosecution for a particular crime were in the slightest degree advanced by it, but if no advantage arises from it, it is a satisfaction to myself to have some person there who is a check upon the warrant not having been improperly obtained, or not made use of to fish out a case without just grounds, and that it is properly executed.

257. Have you turned your attention to the comparative population of the districts, and the character of that population, attached to each office?—I am pretty generally aware of it.

258. You are aware, perhaps, that the office at Union Hall has the greatest quantity of business of any police office?—I am not accurately aware of the fact.

259. The population of the district attached to that office, I believe, amounts to nearly 300,000?—I have understood so.

260. Do you know the population attached to the Whitechapel Office?—I do not know it accurately, but I should think not 100,000.

261. Then the quantity of labour imposed upon the magistrates at these offices must be very unequal?—I do not think the amount of business materially follows the population.

262. But the character of the population being the same?—I do think the character of the population is not the same. There is a different description of population in the Bethnal-green district, for instance, manufacturers principally; and the magistrates have very peculiar and heavy cases of disputes between masters and workmen, which, though they make but little show upon the returns, occupy a great deal of attention, and very accurate attention, to do justice between the parties, in cases where the evidence is very difficult to work out.

263. Are you of opinion that a more equal distribution might be made of the population of the metropolis, with reference to these offices, than that which now exists?—No doubt, if the police offices were to be now instituted for the first time, you would take very fully into consideration the population, as the data to go upon, if there were no other, in placing the police offices; but I am not aware that the expense attending the removal, and so on, would be compensated by the increased convenience.

264. You do not think the number of police offices might be reduced by that means?—I think it would be possible to reduce the Whitechapel Office, and to throw the business carried to that office into the Thames Police Office, by making certain augmentations, but I do not think that or any other reduction could be made, with advantage to the public, provided you reduce the number of magistrates. I think if the number of magistrates be reduced to two at each office, then you could hardly reduce the number of offices.

265. With the reduction of magistrates contemplated, there is also a diminution of duty, because all the double cases would be heard by one magistrate?—That is perfectly true; but there are many cases in which a single magistrate now goes into another room, and takes the cases which may be waiting for the magistrate, who is the presiding one of the day, and by that means he saves the public time.

266. But suppose the magistrates would only be required on alternate days, would that be too hard labour?—No; but at present, when there are two magistrates in the office, they are enabled, by sitting in different rooms, to take off any pressure of business that may occur; it may happen that a single case of felony may take four or five hours, and in that case all the rest of the public would be kept waiting.

267. But if you only require the attendance of a police magistrate on alternate days, would it be too much to say, that in addition he should attend a portion of

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the intervening day?—It would entirely prevent the power of taking holidays; in such an arrangement the magistrate could not go out of town.

268. During that time there would be but one magistrate at the office?—Yes.

269. Then supposing there to be a supernumerary magistrate or two, that would meet the difficulty you suggest?—Yes.

270. That would be perfectly compatible with a reduction in the number of magistrates?—Yes.

271. Do you think the magistrates of Bow-street could beneficially extend their district; supposing Union Hall to be moved further west, do you not think that Bow-street and Union Hall together might wholly absorb the district attached to Queen-square, without any disadvantage to the public?—I should say it is rather a disadvantage to the public crossing the river either way; but I should say that Bow-street and Marlborough-street might absorb the Queen-square district, or you might move Queen-square further into the country, I think, that is to say, that two offices better placed might, perhaps, absorb that district, and that Queen-square might be moved, if that were done.

272. So that, confining the question to the present districts comprehended in the Police Act, there might be two districts absorbed, or two offices abolished with advantage to the public?—Provided always, that you keep up the same magistrates, but I do not think that can be done with only two.

273. Is there not a very considerable diminution of business arising from the new administration of the poor laws?—No doubt, more or less, in every office.

274. Then were all double duty abolished, keeping in mind this diminution of business arising out of the altered administration of the poor law, do you think a reduction of the number of magistrates would be incompatible with a reduction of the number of offices?—I do, because I do not see how the public could be benefited by a reduction of the number of magistrates, and enabling one to act for two, unless at the same time another is acting in another room, which would be necessary if the number of offices were reduced; if you reduce Whitechapel Office and Queen-square Office and continue three magistrates, you may make some arrangement that the second magistrate may take a certain portion of the business; but if you do not do that, you cannot, I think, call upon two magistrates to attend every day; and if you say a third shall attend two or three days a week, those may not be periods of pressure, for the business is uncertain; I do not think, therefore, the convenience of the public would be sufficiently attended to by that arrangement.

275. What are the hours of attendance required by the Act at present?—By the Act at present it is from 10 o'clock in the morning until 8 o'clock at night.

276. Practically what is it?—Practically, if no business remains in the office at three o'clock, the door is shut, and the magistrate comes back at seven; but it is also an invariable rule never to turn away business; and, therefore, in many offices the magistrate is detained as late as four, five or six o'clock; in others not so long, but considerably after three.

277. At what hour does business commence generally in the offices?—At eleven o'clock, within a few minutes, perhaps, one way or the other.

278. At least an hour later than the time required by the Act of Parliament?—Yes.

279. So that by that the magistrates intimate their opinion that there is not business enough to occupy the whole of the time required by the Act of Parliament?—No; it is very natural it should be thought so, but it is not the magistrate's unwillingness to be there; it is that if he comes early the public do not come. It frequently happens to me to go at uncertain hours, in order to see that every thing is going on right, and to be there at an earlier hour than eleven o'clock, and to have no persons coming, even for the applications which might be expected to be waiting for the arrival of the magistrate.

280. If the offices were reduced in number in the way you have proposed, that would produce an ample fund for increasing the stipend of the police magistrates, without any charge upon the public?—Yes, as a matter of expense the public would be gainers, rather than losers by it.

281. Mr. *Marshall.*] Would you think it expedient to extend the Police Act so as to take in a larger extent of the suburbs of London than the present districts?—I think if you extend the operations of the Police Act, it must be accompanied at the same time by an extension in the number of offices.

282. You said that two offices might be done away with in the present districts?—Yes.

283. Supposing

283. Supposing then the same number of offices as at present exist were kep up, to what extent would you increase the district?—I should put it in this way: it might be considered beneficial to make the police district co-extensive with the limits of the Metropolitan Police, always providing what would then be considered locally a sufficient supply of offices and stipendiary magistrates.

284. Mr. *Elphinstone.*] Are you acquainted with the limits of the Central Criminal Court district?—I am.

285. Would it not be advisable to subdivide that district into parts, and to place a police office in each part?—Yes.

286. So that, in point of fact, the whole of the Central Criminal Court district should be supplied with stipendiary magistrates?—I think that would probably be a beneficial thing for the public.

287. Can you inform the Committee into how many divisions it would be necessary to divide the Central Criminal Court district for that purpose?—I should perhaps be better able to inform the Committee, after looking at the map and the population of the district.

288. Will you be prepared to answer that question on a future day?—Yes; I will refer to the map and the population, and be prepared to give my answer.

289. *Chairman.*] With regard to evening attendance at the police offices, do you think it desirable or not to continue that?—Upon that subject I am not certain whether I have not, in my evidence on a former occasion, stated my opinion that it would be disadvantageous to the public to discontinue the even ing attendance; I have since given it a good deal of consideration, and, perhaps, made myself better acquainted with what passes in the City, where their offices shut at an early hour, and there I find it is not considered so inconvenient to the public that the office should not be opened at night; and, in point of fact, it seems probable after a short time the public would accustom themselves to the change without dissatisfaction; I am, therefore, perhaps, a little wavering in the opinion I formerly gave; and I must add, that a circumstance has lately occurred, which strengthens the idea that a change may be effected, which is, that, in consequence of new regulations intended to be made in the gaol of Newgate, we have had an application from the committee of aldermen to know whether we could send the prisoners at an earlier hour, that they may carry that plan into effect with greater facility; to which we have been obliged to reply, that we could not do it, in consequence of our evening sitting. Therefore, that being desirable in a public point of view, it is an additional reason, in my mind, for thinking that the practice may be discontinued without inconvenience to the public.

290. Of course the object of the evening sitting was to avoid any unnecessary detention of the subject?—That was one ground; there was also this ground, that in the event of its being important that an immediate application should be made to a magistrate, there is a convenience in having him tangible, without having to go to his private residence.

291. But were the power of taking bail enlarged, do you not think that then there would be less necessity for evening sittings?—With regard to that, I think that would obviate the difficulty in that respect.

292. With regard to the police offices themselves, suppose they were constructed more as courts, and their forms of proceeding were more analogous to courts of justice, do you not think it would tend to create a feeling of greater respect for the administration of justice?—Upon my word I think there is very good behaviour, very good feeling, by the people attending the police offices, and very considerable respect for the administration of justice; I find no fault; no doubt, outward forms carry weight, but I should hardly think it worth while to go to any expense for the change, so well do the people generally behave, and so respectful to the position of the magistrate.

293. The question assumes there would be an effect produced both in the mind of the judge and the mind of the public?—I do not think it could produce much difference in the mind of the judge, at least it would not upon mine; I endeavour to carry on the business as regularly and steadily as I can.

294. Do you think it necessary to retain the qualification by real estate now required for the stipendiary magistrates?—I should not say it is necessary, but is one of the things in the former Police Act I was desirous should be retained, because I had a notion that it kept up a little more the respectability of the office.

295. It is not required on the part of a judge?—No, a judge has 5,500*l.* a year, to give him consequence.

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296. Mr. *Estcourt.*] If the qualification, is retained, do you see any objection to vary it so as to make it dependent upon personal property as well as landed property?—None whatever; my only feeling was, that I did not quite like the stipendiary magistrates being removed out of the pale of the magistracy of the kingdom; but I do not attach any very great weight to my own opinion upon that matter.

297. *Chairman.*] But the qualification might exclude many able men, might it not, who might be perfectly fitted, from their reputation as lawyers, for the situation?—Yes, no doubt it might.

298. Mr. *Estcourt.*] But if the qualification were enlarged, so as to embrace both landed and personal property, have you any apprehension that there would not be a sufficiency of barristers to fill the situation of stipendiary magistrates?—No, I have no apprehension that simply with landed property there ever would be a want of lawyers possessing that qualification and well calculated for the office. If I had any doubt for a moment that it would act as a bar to getting good and fit men, I should never wish such a requisite to remain.

299. *Chairman.*] Do you think there is no good lawyer without ample qualification whether by land or personal property?—No; but there is no lawyer fit for that office who might not get that qualification, if required.

300. With reference to warrants issued by police magistrates, would it not be desirable they should run through the City, and that the warrants of the City magistrates also should take effect in the country?—Yes.

301. Without backing?—Yes.

302. Do not you consider it an impediment to the administration of justice, keeping up an isolated jurisdiction like that of the City?—Yes; one of the suggestions I contemplated for the improvement of the Police Act was, making warrants and summonses valid, without the necessity of applying to a magistrate of the district within which they are to be served or executed.

Jovis, 4° die Maii, 1837.

MEMBERS PRESENT:

Lord Hotham.	Mr. C. Ross.
Mr. Howard Elphinstone.	Mr. Clive.
Mr. Clay.	

MR. HAWES, IN THE CHAIR.

James Traill, Esquire, one of the Magistrates of the Public Office, Union Hall, called in; and Examined.

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303. *Chairman.*] YOU are an acting magistrate at Union Hall?—Yes, I am.

304. You have been acting as a magistrate there for some few years?—For three years and eight months.

305. It is an office of very extensive jurisdiction, with a very populous district attached to it?—It is a very populous district, and the jurisdiction, I believe, is in proportion to the population, in some measure.

306. A large proportion of the population is to be considered as poor?—Yes, the principal part of the population is of the poorer order.

307. Before entering generally into matters relating to the improvement of the police system, the Committee wish to ask whether you have any amendments to suggest in the existing Police Act?—Yes, there are certainly some alterations which, in the event of its merely being renewed, I think might be introduced; some of them are quite verbal alterations; I should also propose, which perhaps is not necessary in the first instance, the taking away of the county qualification from police magistrates, as being quite foreign to their appointments altogether.

308. You mean the qualification by estate?—Yes; I think it has nothing to do with our appointment, which emanates from the Home Office entirely. The first alteration which occurs to me is in the 10th section, where, I think, there is a defect in not giving a power to commissioners or magistrates to detain a police constable, who is under a charge for some misconduct, in the interval between the time when the charge is brought against him and when he is brought up

up before the magistrates to be heard; the consequence of which is, that some of those persons, although they have had fines imposed upon them, and have been dismissed, have been threatening actions against the superintendent who has kept them in custody. I think it is in our Act that the power of punishing police officers is introduced, and therefore it is in that Act that the alteration should be made. The next is the 13th section, which relates to the fees to be charged at the offices; I think something ought to be done to legalize the charges that are made at all the police offices now, and which have for years been made. At present, I believe, at all the offices in London, besides the fee for making out the warrant or summons, which is called the King's fee, there is a charge made, according to the distance the officer travels to serve the warrant or summons; it is called the mileage fee, and is usually a shilling a mile; there is no objection to that as a fee; I think it is very proper it should exist, but it should be legalized in some Act, and not merely by practice. I think, if it is allowed to exist, it ought to be a definite fee upon every summons or warrant, without reference to distance, say three shillings upon every warrant or summons, payable as a King's fee, for I see no reason why a man living at a distance should pay more than a man who lives near. The next section is the 24th, which prohibits the blowing of horns and other noisy instruments, "for the purpose of selling, hawking or distributing any article whatever." I think that ought to be extended to other things; I may mention, as an instance within my own experience, the case of the Rotunda, in the Blackfriars-road, which went to such an extent, that it ruined the next door neighbour, and drove him from his house. Some person took it from the proprietor or lessee, and set up some exhibition, which I believe was harmless in its way, but first of all, by way of attracting spectators, and out of mere opposition to the police authorities, he created such a dreadful noise, yelling, beating drums, and every sort of disturbance, that at last it became such a nuisance to the neighbourhood that the police were called upon to interfere, and for several weeks the inspector and police constable were kept walking before the door, having no power whatever to interfere, but merely preventing any nuisance in the street, by dispersing the crowd, that might cause an obstruction in the front of the house. Now to avoid that, I should propose inserting a few words in the third line, after the word "aforesaid," "except at any fair by law authorized;" and in the fourth line, after the word "article," "or for the purpose of announcing any show or public entertainment."

309. Should you think the alteration you have proposed, being in the nature of restrictions, would be in any way injurious to individuals or the public?—No, not at all; this very thing is an indictable offence; but to indict him, the man must have put himself to so great an inconvenience and expense, that rather than do so he chose to leave the place, though at a considerable sacrifice.

310. And in the case to which you refer, I believe it led to a very serious deterioration of the property of individuals living in the neighbourhood?—No doubt of it whatever.

311. Might not the object of the proprietor of the Rotunda have been accomplished by the ordinary means of announcement, by means of placards, of handbills at the doors, or by any other means which involve no offence to the immediate neighbourhood?—His lawful purpose might; but his real purpose was annoyance.

312. Mr. *Elphinstone*.] Do mere informers ever take advantage of this clause, in order to convict a party?—I never knew any complaint upon it in all my time.

313. Mr. *Clay*.] It is an offence, though constituted by a clause in the Act perfectly definite in its nature, is it not?—Not quite.

314. Will you explain why you think it is not?—The words "noisy instrument," which occurs in the clause, are ambiguous, and admit of great difference of construction on the part of the magistrates; in construing the section of the Act of Parliament myself, I should not think of inflicting the punishment, except in such a case as would have been indictable at common law; that is to say, where the inconvenience to the individual neighbour or person complaining would have been such as would have enabled him, if he happened to stand in such a situation as to prefer an indictment, to have succeeded at common law.

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315. Mr. *Elphinstone.*] That being your opinion, would it not be advisable to insert these words in the section?—That would be only to give effect to the common law.

316. You wish to restrict the jurisdiction to those cases to which the common law now applies?—I would not be limited to that quite; I think it ought to go further; for instance, where a man has a good cause of action for an injury to his property by some casual annoyance, he ought to have a summary redress for it; it may be a ground of action for an injury to a man's property or an annoyance to his family, where it will not be a ground for an indictment.

317. Would it not be possible to introduce words to that effect in this section?—No, I think not; you must define what would be a noisy instrument, which I think would be impossible.

318. Mr. *Clay.*] Do you think it possible to substitute with advantage, instead of the prohibition of blowing horns or any other noisy instrument, words giving to the magistrates a wider discretion, as to preventing any nuisance of the nature specified in that section?—I am afraid that would be giving a very large discretion; unless you defined it in some shape, it would put an end to cries, which are sometimes a great nuisance, but at the same time, I think, are not such a nuisance as the Legislature would put down; I mean the common cries of articles to be sold in the streets.

319. Are there not very great nuisances in some of the most crowded thoroughfares, by showmen stopping with large caravans for exhibitions?—These we may put down as obstructions of the thoroughfare, under the present Street Act, the 57th Geo. 3.

320. With respect to persons singing or reciting in the streets, making a considerable noise, do you conceive you have a power, as a magistrate, under this or any other Act, to put an end to a nuisance of that kind?—No, I think not, except on the ground which was taken in a case which is probably alluded to, of treating it as a constructive mode of begging, under the Vagrant Act; I do not think there is any power to deal with it, except by indictment; there is no summary jurisdiction with respect to it that I am aware of.

321. There is a clause in this Act for preventing obstructions in the public way, is there not?—Yes.

322. Then, upon the whole, it does not occur to you that this section could be altered with advantage, or larger powers given to the magistrates as to general offences in the streets?—The only cases that I can conceive of noises made by the human voice are those which are painful to the neighbourhood, or which are offensive to the orderly keeping of the streets, and I think it is a power so difficult to define, that it could hardly be trusted to the discretion of the magistrates; this would touch all noises made by instruments.

323. Lord *Hotham.*] Has it occurred to you the propriety of making any alteration in the Police Act with respect to gaming-houses?—I am very little conversant with gaming-houses at all; our population is not of that class which have gaming-houses of a respectable looking character, and therefore I know very little upon that subject. I think it would perhaps be desirable that the Metropolitan Police should have free access to every place of that kind.

324. *Chairman.*] I observe in this clause, the punishment on conviction is imprisonment, with hard labour; is that in the event of the fine not being paid?—Yes.

325. Do you not think it always desirable to have an alternative punishment, namely, fine or committal to prison, with or without hard labour, as the case may require?—Yes.

326. Now, will you proceed to the next section which you think capable of improvement?—The next is the 25th section, "negligence, or wilful misbehaviour of drivers of carriages, &c., in the streets or highways." The first alteration is in the third line, after the words "vehicle thereon:" I propose to introduce the words "or riding thereon." "Riding" is the word used in the Highway Act, and I suppose it is well understood to mean riding on horseback. In the 14th line, after the words "or damage," I propose to introduce the words "or danger."

327. Will you explain what you mean by the words "or danger?"—I introduce the word as it exists in other Acts of Parliament which have provisions for similar

similar purposes, namely, the Hackney-Coach Act, the Stage-Coach Act, and, I think, the Highway Act.

328. But would you punish a person without damage being done?—Yes, I think you must prevent damage being done, if you can, and in order to do that, you must make a person who is conducting himself in such a way as immediately or approximately to produce danger, liable to punishment, as a prevention. I am not introducing a new word; it is to be found in other Acts; but it would be more convenient that it should be introduced into this Act. It is a very nice thing to say what is danger; but unless you have some mode of dealing with it before it amounts to damage, you cannot be protected from it. The difficulty as it stands now, is this: under the Hackney-Coach Act, those who should endanger the lives or property of passengers, or the property of the owner, are liable to punishment; and under the Stage-Coach Act the same rule applies; so that a man may not drive a hackney-coach or a stage-coach, so as to endanger the lives or property of persons; but he may drive a private carriage or a butcher's cart so as to endanger both; I think that is a difference which ought not to exist. The reason I introduce it therefore is, that it does exist in other Acts; and it seems monstrous that a person can do that with one vehicle which he cannot do with another.

329. Mr. *Elphinstone.*] In the 30th line, would it not be advisable to give the magistrates discretionary power to award full compensation for any damage that may be done, even though the damage may exceed 5*l.*?—I think the extension of our powers in all those matters beyond 5*l.* would answer the public demand very much.

330. Suppose, for instance, the panel of a carriage is injured, which may amount to 10*l.*, is it not desirable that the person who damages should be summarily fined before a magistrate?—Yes, I think the jurisdiction might be extended to awarding a reasonable compensation; in fact, we find that persons very often abate part of the damage to get the advantage of a summary jurisdiction.

331. *Chairman.*] Have you formed any opinion as to the sum to which you think it would be expedient to confine the jurisdiction of the magistrate to award?—I cannot take upon me to say how far they might be trusted with a jurisdiction of that sort; I should say 10*l.* or 20*l.*

332. What is the next section in which you would suggest any improvements?—In the 44th section, "for offences declared misdemeanors, and for which no penalty is appointed, the offender shall forfeit any sum not exceeding 5*l.*, and be imprisoned, with or without hard labour;" in the 10th line, after the words "house of correction," I would repeat the words "with or without hard labour;" these words appear in the margin of the Act, but not in the clause itself; and it is so doubtful, that whenever I have imposed a fine, I have left the matter open till the hour when the man is to go either to the house of correction or to prison; and when it is a case which I think ought to go to the house of correction, I make it an absolute imprisonment, instead of the alternative. I think it would probably be safe to do the other; but I think it ought not to be left doubtful at all.

333. Have you now finished your suggestions, for what may be called verbal alterations in the Act?—Yes; there are other matters I have noted down, which probably would more properly come under the head of extension of powers of magistrates.

334. Have you any suggestions to make with regard to improvements in the administration of justice in police offices?—Yes, there are many suggestions which I might make, but it is a very large field; there is one very apparent improvement, I think, which must strike every one, that the position of the Metropolitan Police should now be established on its right basis, viz., that of possessing the whole executive power of the police establishment of the metropolis.

335. You would throw upon the Metropolitan Police, the whole of what may be called the executive duties of police?—Yes.

336. Now will you describe them as accurately as you can, so that the Committee may understand what you conceive to be the executive duties of police, as contradistinguished from the judicial duties of the magistrates?—I consider that perhaps the better way of defining them would be, to define what is the magistrate's duty, because all the rest is executive; I think the magistrate's

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duty is three-fold; that first, and which was the original function of a magistrate, is that of protecting the peace, by calling persons before him who have committed, or are about to commit breaches of the peace, and requiring sureties for their good behaviour; secondly, by being the depositary of that power which consists or is exercised in investigating matters of a criminal nature, which are afterwards to be brought for trial before a jury; and thirdly, by being the tribunal himself, both judge and jury, in these matters, where he has that power conferred upon him by special Acts of Parliament; every thing else which the constables, or those who direct the constables, can be called upon to do, is, I think, executive.

337. Then in point of fact, you would throw the duty of preventing and detecting crimes entirely upon the police force under the Commissioners of Police?—Entirely.

338. And you would confine the magistrates strictly to the duty of adjudicating upon cases brought before him by the police?—Entirely.

339. Leaving the collection of the evidence entirely to the superintendents and subordinate constables of that force?—Certainly; the only part which a magistrate could act in that department of his duty would be in issuing his warrant, when called upon by the party, or by a police officer in behalf of the party.

340. I believe the magistrates are rarely called upon now to issue warrants to apprehend parties in cases of felony?—Very rarely at our office.

341. The detection of crimes of that description, is almost wholly discharged by the Metropolitan Police force?—It is almost wholly, I think, at our office.

342. With regard to search warrants, what is the practice at your office?—We must always be applied to for a search warrant, whoever takes it out, and I believe the practice at our office, with some exceptions, is generally to give it to a constable in the office, not from any preference that I know of, but because it is an advantage to him.

343. What would be the practical objection to the officers attached to your office being members of the Metropolitan Police force, subject, whilst at your office, to your direction and control, and subject to your dismissal for misconduct; but at the same time, both with reference to pay, clothing and the general rules and regulations of the force, not interfering with the duties of your office, under the Police Commissioners?—It would be highly desirable; but I think another arrangement would be still more desirable, namely, that we had no officers at all, except those called upon to do the in-door duties of the office, and that the functions of all officers, whether with regard to civil or criminal matters, were executed by the Metropolitan Police.

344. Which would be, in fact, carrying out your notion of the expediency of confining the Police Magistrates to purely judicial duties?—Yes, I would have every description of business which ever gets before a magistrate brought to the office, and the process served, and all the initiation of the business done by the Metropolitan Police.

345. Mr. *Clay*.] The principle to which you have alluded of separating the judicial from the executive functions of the magistrates, supposing it were carried out to the fullest extent of which you conceive it capable, what practical difference would it make in the duties now performed by them?—I cannot say, in all the offices; it would make very little difference in our office, for we have very few matters which do not pass through the hands of the Metropolitan Police, except what we call private business, summonses and warrants, and matters which are not of a criminal nature, or where the parties do not take out the warrants themselves, in which case they are in the hands of our own officers.

346. If I understood you rightly, the practical effect of carrying out your principle would be chiefly the getting rid of police constables at present attached to your office?—That would be one of the effects of it; but the practical effect of it would be very large and beneficial indeed, because, instead of having, as we have now, persons applying at the office, the business passing through the hands of an officer who is disconnected with the police altogether, and so all the information which relates to that case being drawn away from the general current of information, passing to the central establishment of the Metropolitan Police, you would have one uniform diffusion of information from all the circles of the police establishments to the centre, upon which the Commissioners might act.

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347. Is not this whole effect involved in the practical effect to which the former question referred, that is to say, that all the effect you have now described, flows from the one alteration of taking away the police constables at present attached to each office?—If you take away the police constables, you must necessarily resort to that.

348. Those effects would flow from the alterations suggested in the former question?—Yes.

349. In the case supposed, then, namely, that the whole of the police constables should form a portion of the force under the directions of the Commissioners, your impression is, that the magistrates will be relieved from a great extent of duty, namely, that persons would not come to them to state the commission of an offence, and take instructions from them as to the mode by which it might be detected, at least in the first instance?—The effect in that respect I cannot exactly anticipate; that would depend exceedingly upon the individual magistrate, both as to his strictness of attendance, and the assistance he can give to the party complaining, or from the police taking up the case, how far he would or would not be resorted to in directing the proceedings and bringing matters before him.

350. Would not the natural answer for him to give, in such cases, be, "You had better make your application at once to the police?"—Yes; but a warrant would have to be obtained; in case of a search, it must be obtained, and in some of doubtful felonies.

351. But the Committee think that you recently stated that warrants are rarely applied for at present?—They are rarely applied for, but there must be some person to grant them, if they are applied for.

352. But in the change of system proposed, would not the better way be for the police magistrates to refer the party, having sustained an injury, to the Metropolitan Police for a warrant, there to be given to the party applying, when accompanied by a police officer, who is to put it in force?—Certainly.

353. Would it not make the present system more complete, and the advantage to be derived from it more decided, if the Police Commissioners and the superintendents also, supposing them to be persons properly qualified, were to have the power of granting warrants?—The Police Commissioners have the power of granting warrants now under their Act.

354. Are they in the habit of granting warrants?—No, nor do I think they would like it.

355. In point of fact, it is not the practice?—No; they may do it now, and their not doing it raises a presumption in my mind that they see no advantage in it.

356. Is it not essential to the perfectly carrying out of the principle to which you have referred, of separating the judicial from the executive functions of magistrates, that the Commissioners should, in point of fact, exercise that power?—No, I do not think it is essential; I do not see the least objection to it, but I do not think it is essential, for the duties of the magistrate are clearly ascertained in both cases; though he issues the warrant to bring the accused before him, he has not taken a part in the transaction in favour of either party by that act. If it is a felony, for instance, that is to be sent to trial, he is not acting the part of the judge at all unless in so far as he judges of the sufficiency of the case to be sent to trial. If he merely issues the warrant, the signing of a warrant or summons is not taking a part in a thing, but only saying "Such a case must come before me to be heard."

357. Is not that ministerial?—Yes, in many cases, but there are some cases which require a little skill and competency of knowledge for a man to say whether a warrant ought or ought not to issue.

358. But if it be essential for preserving the magistrates free from bias in their judicial character, of which the steps previous to committal may be said to form a part on the one hand, and that his time should not be occupied by any of the executive duties of police on the other, are not both these reasons for confiding to some other authority than the magistrate himself the issuing of warrants?—With respect to the bias upon his mind, if he is merely applied to for a warrant, which is put into the hands of the Metropolitan Police constable, we will say, I do not see that any bias can exist. He has a story told to him, and he is asked whether that is or not a foundation for a warrant. That is a

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short inquiry which would create no bias in his mind as to the truth or falsehood of the story, when it comes to be heard as a matter of evidence.

359. Is it, at least, then, not an occupation of his time and attention, from which it would be useful to release him?—The occupation of his time and attention in these matters is very small; it is hardly worth reckoning; I do not suppose it would make five minutes in a day. So little occasion have we to grant warrants, except in a case of search, which must come before a person exercising magisterial functions.

360. Then the great advantages you contemplate from getting rid of the police constables attached to the office arises principally from the saving of the magistrates' time in cases in which warrants ought not to be granted?—As to the magistrates individually, or as to the public, as far as the magistrates are concerned, I do not think it is of much importance, but I think as to the police establishment it is of the greatest importance. I think it is of the utmost importance there should not be any obstruction in the way of any information, or any clue to discovery to the heads of police; that every thing which leads to the detection of crime should be in a regular course of circulation from every branch of the police force to the Commissioners, and from them back through every branch of the police force.

361. Does not that seem to render it important, with reference to a former question, that in all cases after the commission of an offence, the first application should be made to the police?—If the question refers to the granting of a warrant, it is not always that a warrant is granted by a magistrate; generally the police constable takes up the case himself; he receives information, and acts upon it; nine-tenths of the cases come in that way before the magistrates, but in other cases the constable refers the parties to a magistrate, when he has some doubt whether he ought to act.

362. Then the result of your opinion would seem to be, that under the proposed change of system it should still be left to the option of parties to apply to the magistrates for a warrant, but it would be expedient that the magistrates should, as much as they could with propriety, in the first instance, refer all the parties in most cases to the police?—I think they should in all cases put the business into the hands of the police to be executed, but whether with or without a warrant is a matter depending upon the circumstances of the case; for instance, in all cases of felony, cases of transportable misdemeanor, and all cases of granting warrants of search, I think the magistrates ought to be referred to, or at least the parties ought to have the power of referring to them. In all cases, I think, it would be desirable that the door of the magistrates' office should be kept open to the public, that there might be no suspicion that the police authorities were remiss in taking up all cases that came before them.

363. Mr. *C. Ross.*] Your view, then, would be, to leave all parties the choice, if they thought fit, of going either to the police magistrates or the Commissioners of Police for the warrant?—Precisely so.

364. Do you think it would be inconvenient to the public if parties were compelled to go before the Commissioners of Police solely for a warrant, on account of the distance at which many persons reside from their office?—Yes, I think it would be very inconvenient; I think it is desirable that every facility should be afforded to the public to obtain warrants.

365. Do you not think there is a considerable distinction between granting warrants in the first instance for the sake of commencing the investigation, and granting warrants which may be rendered necessary for the further proceedings in the case; for instance, the first warrant is granted on suspicion; the second warrant, which arises in the further proceedings in the case, involves more serious charges against the individual who is affected?—I am not aware at this moment how that observation applies; on the contrary, I think the first difficulty is the great difficulty, to see whether there is or there is not an offence committed.

366. Then you think it would not be advisable to confer a power of granting warrants upon persons other than magistrates and people of education?—The granting of a warrant, where there is an oath, is perfectly safe for the person who grants the warrant; that is a protection for him; but the question is, how far you ought to receive the party's oath first of all to affect the subject's liberty, and then his own interest in making himself liable to an action.

367. There is always a responsibility?—Yes; there is a responsibility on the part of the person whose oath is taken, and there is a great responsibility on the part of the magistrate who grants the warrant.

368. Do you think it would be advisable to confer upon any of the officers of police, such as superintendents, for example, the power of issuing warrants?—That would suppose them to possess sufficient knowledge to be competent to be justices of the peace; and I have no doubt they are competent to do so, as far as I know them.

369. You would not be afraid to entrust them with the power?—Not in the least; they come to me and ask what steps they ought to take, as a matter of their own free-will, knowing I would give them my best advice and attention in the case; but I have no doubt they would have acted with great discretion, good sense, and perfect legality, if they had acted upon their own judgment; of course, I can only speak from facts within my own knowledge.

370. *Chairman.*] It appears, from what you have stated, that search-warrants are always, when required, granted by the magistrates?—Yes.

371. But ordinary offenders are constantly brought before the magistrates without any warrant at all?—Yes, the great majority of cases are in the police sheet.

372. Would it not then be some security to the public if police constables were always required to have some authority, from either the magistrates or superintendents of police, before they apprehended an individual, save and except where the case occurred in their sight?—I think that is a very important question, as it relates to the execution of the police officer's duty, because I think a good deal of injury to the investigation of these matters arises from the arrest being made too promptly; in most cases, the arrest should be the last thing, instead of the first, as it too often is; but I think that is one of the evils arising from our intermingled system of police now.

373. If it were thought desirable to invest superintendents of police with a limited power of issuing warrants for the apprehension of parties, your opinion is, that thereby the power of the constables would be less liable to abuse than it is under the present system, where the apprehension often takes places hastily, and without sufficient consideration?—I would say, in answer to that, that the circumstance of there being two persons looking after the same object, as it were, under a certain degree of competition even among the members of the metropolitan force themselves, the effect is so far injurious, that it often produces the apprehension of a person charged just under such circumstances as to preclude the possibility of getting evidence against him, or interrupts the course of tracing that evidence, which would be done with more effect if he was not expecting to be apprehended and charged with an offence.

374. Would that be the case if the superintendents were made answerable for the due execution of warrants or summonses, or processes of any description issuing from the police office?—I think the effect of putting the police force upon the footing I now mention, would be that of making all persons in the police force more competent to do the business than they are now, or ever can be while they remain upon the footing of having other persons liable to interfere with their functions.

375. It would also ensure this as a security to the public, that the whole of the criminal business of the police districts would pass through the Commissioners, who would thereby be rendered more clearly responsible?—Certainly, it would have the most beneficial effect in that respect; and every thing which tends to interrupt that is a violation of the principle upon which the metropolitan police has been established, as I conceive. Whether it is the local interference of a police office, or the interference of a separate police establishment altogether, or the interference of an exclusive jurisdiction, makes no difference. It is more or less in degree only; it is an interference with the principle upon which the Metropolitan Police were first of all created.

376. There is considerable expense incurred now, in making known the commission of crimes, and describing the persons of individuals; supposing the criminal business to be thus separated, do you not think that might be effected more economically and more beneficially than it is?—Certainly; I think we should save a good deal of our printing, and some of the expenses of our establishment. We should save the daily report, and we should save, I think, our monthly report; the one costs the clerk half an hour's work at night, and the other

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other two days' work in the month, and both of them would be quite superfluous, provided the Commissioners of Police were in possession of every fact and circumstance of every kind relating to the state of crime in the metropolis.

377. Are you aware of the annual expense to the public, for printing those reports of the state of crime at the police offices?—No, I am not.

378. I believe you have already stated, that were the prevention and detection of crimes wholly and entirely entrusted to the police force, without any distinction of officers, in all probability the duty would be much more effectually performed, and more early and more accurate information would always be obtained, and the probability of the discovery of offenders would be materially increased?—I have not the least doubt of it.

379. You would therefore incorporate the officers of the police offices with the police force, and have but one body, with one head as the source of information as to the state of crime, and as the instrument by which to elicit and prevent it?—I would have no police officers at the office at all; I would put it out of the power of circumstances to cause the intermingling of those functions, which I think ought to be kept separate, and which are of no use, unless they are kept separate; I should state also, that I think the effect of it would be beneficial upon the character of the police themselves, and that it would make all the officers of the Metropolitan Police more competent in the performance of their duty, when the thing is intrusted entirely to themselves.

380. You are aware that an objection has been advanced to this employment of the Metropolitan Police, founded upon the difficulty of confiding delicate or responsible business to persons not under the absolute control of the magistrates?—I do not perceive the force of the objection at all.

381. Do you think there is less force in the objection, admitting there is some force in it, now that the prosecution and detection of crimes has ceased to be one of the duties of the police magistrates?—The matter is entirely altered in that point of view; the necessity for such communication between the magistrates and the officers is exceedingly small at present, and I say again it ought entirely to cease.

382. In point of fact, the execution of all summonses and all process whatever, should be in the hands of the police force?—Yes.

383. Do you think that thereby a considerable sum would be obtained upon the fees chargeable upon such business?—The Metropolitan Police force in that case would be entitled to whatever fees were allowed to be charged upon warrants and summonses, and it would form a considerable sum.

384. Would it not form a fund, by means of which both diligence and merit in that force could be rewarded?—Certainly, if it could be allowed to be so appropriated, which, I think, it would be very reasonable to do.

385. So that by that means you might form a fund for the reward of diligent and meritorious officers?—Yes.

386. And there would be a more equitable distribution of it than now, it being then supposed to be placed under the direction of the Commissioners?—Yes.

387. Will you state to the Committee the advantage you conceive would arise from intrusting to the constables of the police the execution of every kind of process issuing from your office?—I think the process would be served much more promptly, and at much less trouble, than it is at present. At present, if a summons or warrant is taken out, the officer has a great deal of trouble, and a good deal of time is occupied in finding out, first of all, who the person is, where he lives, and the hour at which he is to be found; and after he has found him, he has a good deal of trouble in communicating to the person taking out the summons for what day the hearing is appointed; so much so, that there are continual complaints made at the office that warrants or summonses have been taken out, and that the officer has given himself no trouble about them, and will not execute them; whereas, the fact is, that the officer has taken a great deal of trouble to execute them, but has not been able to do so, from not knowing the party. Now that objection would not apply to the Metropolitan Police, for the moment it gets into the hands of the constable of the beat, he would know where the party is to be met with, at what hour, and he would, perhaps, know him by person; so that there would be no delay or difficulty in the service of the process. Again, it is a matter of great importance in serving our processes, particularly with reference to summonses, that the party should be

be clearly identified, because, as we cannot proceed to convict a man in his absence, unless we can show he has been personally served, in the great majority of cases the identity of the party is essential to our convicting. Now, our officer, to whom he is a complete stranger, might very often make a mistake about that; he may call at the house, and ask the person who opens the door, "Are you the person to whom this summons is directed?" he may answer untruly, he is, and proceeding upon that information as a personal service, our conviction would not be good. That is a risk which would not occur if the Metropolitan Police constable who is in the beat, and acquainted with the party, is intrusted with the summons.

388. Now do you think there would be any advantage to the public in giving to the superintendents power to take the recognizance of persons charged with offences at the station-house during the time the police offices are closed?—There is such a power in the Metropolitan Police Act at present, but I think it ought to be extended.

389. Are you aware that in practice it is not acted upon?—It is acted upon, in some degree, in the case of bail; I think there ought to be a personal recognizance where it is taken at all.

390. In petty cases of assault, for instance, and wilful damage, and other petty misdemeanors, would it not be advisable that the party should be called upon to enter into his recognizances, say 5*l.*, or some sum of that description?—I think it would be very expedient.

391. And also in graver charges, would it not be desirable that the party making the charge, having entered into a recognizance, and failing to follow it up, should be subject to its forfeiture?—In all charges, I think, the officer who was on duty at the time the charge was made should have the power to require the person by whom the charge is made to enter into his recognizance to appear before the magistrate; and upon the refusal of the party making the charge to do so, he should have the power, in all cases, even of felony, unless the person charged is known to be a person of bad character, or unless the officer himself has any specific knowledge of the case, which renders it extremely probable that such an offence has been committed, to take the recognizance of the person charged, and to discharge him on his recognizance to appear the next day before the magistrates.

392. Who would be the officer to whom you would give that power?—It must be the officer on duty, because it must be done at the moment.

393. Would you confine it to the superintendents?—It might be confined to the inspectors; but I think the officer on duty is competent to do it.

394. I will read a passage from the Report of the Committee in 1833 on this subject, and ask your opinion upon it: "Your Committee is of opinion, in concurrence with many experienced magistrates, that it is safer that all persons once received into custody at the station-houses should only be discharged by the order of a magistrate, a system which has been of late strictly adhered to." May the Committee infer, then, that you differ from the Committee of 1833 in that opinion?—Certainly; with regard to the minor offences, completely; so much so, that I have frequently had it in view to write to the Commissioners to know whether the other course might not be safely adopted; I can conceive no public mischief from the power being in the hands of the police, and I can conceive a great deal of personal inconvenience from its not being in their hands.

395. With respect to requiring parties to enter into sureties to prosecute a charge they have made, what effect do you think that would have upon prosecutors; do you think it would at all interfere with the conviction of criminals?—No, I think it would tend to prevent a number of idle charges of felony, which are meant only to get rid of a troublesome person, and are probably not at the time intended to be followed up, or where the intention is abandoned immediately after the person is taken into custody.

396. Would you give the magistrates power to levy the recognizance, on failing to prosecute the charge that is made at the station-house?—Yes, and the magistrates might have the power of compensating the party, to a certain extent, for the loss of time he has been kept in confinement, or from the injury he has suffered in the charge being brought against him.

397. At the expense of the party making the charge?—Yes.

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398. Then you are of opinion that would not tend to prevent the detection of criminals?—Not at all.

399. Do you think it expedient to give the police any additional powers over gambling-houses, brothels, unlicensed theatres, or disorderly houses?—I think the police should have a very free power of access to those places, so as to be able to ascertain what was their mode of proceeding, and to make a complaint to a magistrate, if it is any thing he has a right to take cognizance of.

400. Supposing the power to be thought expedient, would it not be right to confine the exercise of it strictly to the Commissioners or their agents expressly appointed under their hands for the purpose?—That would be perhaps a more discreet use of the power, if they were intrusted with it.

401. So that you would limit it to the inspectors, superintendents and constables appointed directly by the Commissioners?—That would be the safer way of exercising the power.

402. At present there is no law to compel public-houses to close at night, I believe?—No, there is no positive prohibition; there is no prohibition in language; it is only punishable as a breach of good order, according to the terms of their license.

403. And which words are construed very differently by different magistrates?—Yes, it is a constructive breach of good order.

404. Do you think it would be advisable, or at all advantageous (always confining these questions with reference to the extension of the powers of the Metropolitan Police to the stipendiary and qualified magistrates), to enable the magistrates to require sureties for good behaviour, with power to forfeit such sureties from parties who should be found drinking in public-houses after midnight, or between certain hours to be named?—It would be a very beneficial thing to the parties themselves, and therefore a benefit to the public, of which they form a part; but I do not know how far it would be easy to introduce it. It is a very considerable interference with the profits arising from the publican's business.

405. If it applied equally to all publicans, do you think that would be an objection?—There would be equal justice in it; but I think they would equally object to it.

406. Do you think the more respectable portion of the publicans would object to it?—Probably they might render assent to it as being generally advantageous to the character of the trade.

407. Have you turned your attention to the present distribution of the police officers, with the districts and character of the population annexed to them, with a view to furnish the Committee with any information as to the practicability of reducing their number, without inconvenience to the public?—I have no practical knowledge of the amount of business, or the character of the business, at any office except my own; but, taking a very loose mode of calculation, I should think the duty of the office to which I belong would not be over-estimated if I say it is one-seventh, or probably one-sixth, of the whole Metropolitan Police duty.

408. May the Committee infer from that, therefore, that, speaking from your experience as a metropolitan magistrate, that five other offices, discharging an equal amount of business, would be able to take all the police business of the metropolis, assuming at present no alteration in the law, nor any alteration with reference to the separation of the judicial from the executive duties now exercised by the magistrates?—I should say my impression is, that taking the larger number would be a safe estimate; taking one-seventh; that is to say, making seven offices instead of nine; but I conceive a great deal more work would have then to be done at our office, with advantage to the magistrate as well as the public. I might very well say six offices, so far as regards the quantum of work to be done at them, would be sufficient for the present extent of the districts.

409. The business at the police offices has decreased in consequence of the Poor Law Amendment Act?—Very considerably, in point of the time occupied at the office.

410. Supposing the law were altered, so as to enable a single magistrate to discharge, in all cases, the duty which now requires two, that is, supposing all double duty were abolished, and magistrates were able, singly, to discharge all their duties, do you not think, as well as the reduction to which we have alluded in the number of offices, that would also justify a reduction of the number of

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magistrates at each office?—Certainly there might be a reduction of magistrates at each office.

411. To the extent of how many, do you think?—That would depend upon what would be the attendance you require; I do not mean of the number of hours, but of the attendance of more than one magistrate; I understand the doing away with the double duty altogether, and allowing that to be done singly, it would still be a question whether you would or not have two magistrates at the same time doing duty at the office, so as to expedite the business more; because, if you diminish the number of offices, you ought to make some compensation to the public, by expediting the business or economising the expense, and I think you may do both; I think, by having two magistrates sitting every other day, or three days a week, you may so expedite the business at the office, that a person who has to come a mile or two farther would not lose more time than he would do now.

412. How would you provide for relief in cases of indisposition or of necessary recreation, supposing two magistrates are obliged to sit every day?—Looking to the establishment of two offices, I should say in Surrey, conveniently situated towards each other, four magistrates might transact the business of those two offices, and allow three months' absence in the course of each year to each person.

413. There would be occasions, then, according to your plan, when one magistrate would have to do the whole duty of the office?—Yes, two magistrates being there three days in the week, and one magistrate the other three days.

414. The presence of two magistrates three days in the week would do?—I see no practical objection whatever; the necessity for having two magistrates does not arise from any difficulty or nicety in the case, but simply because the Act of Parliament has so willed it, and, generally speaking, it is not the case of double business which gives the magistrates the most difficulty and causes the most anxiety; they are matters which are left to his final discretion, acting singly.

415. You think one active magistrate, regularly attached to the office, with occasional assistance, would transact the business with perfect ease to himself and fully as much to the satisfaction of the public?—I think quite so; I think the public never considers the question of one or two magistrates at all, and they are very much disappointed sometimes when a case comes in, and the second magistrate perhaps has gone, that it cannot be heard.

416. Do you not think that by doing away with the system of divided responsibility, great advantage would accrue, namely, that this single magistrate would be called upon to think and act more deliberately?—I think there is no doubt of it; I think he derives no assistance from his fellow magistrate, and that it sometimes has the effect, from seeing a little appearance of consultation between two magistrates, of making parties suppose there is a doubt in the case where there is none, except that he must have his formal assent to what he is doing.

417. The presidency of one magistrate for certain periods of time would also ensure general uniformity of decision and practice, would it not?—I do not believe it would have much effect upon that, for there would be as much change of magistrates as there is now.

418. The reduction of the number of offices, and the reduction also of the number of magistrates, would leave a considerable sum of money available for the purposes of police should it be thought necessary to apply it still to that purpose?—Of course in proportion to the reduction you make, it would allow the reduction of so many salaries, and the reduction in the expense of the office, would be something like 500 *l.* a year; I mean merely the expenses of the office, that is, for rent, coals, &c., independent of the salaries.

419. Do you think, speaking generally, that, were the salary of the police magistrates augmented; say, were the salary of the one suppressed magistrate at each office divided between the other two, you would, in all probability, in the long run, secure men of greater practice at the bar as police magistrates?—I think you would get a higher class of legal competitors, and I believe, as an abstract question, it would meet with less difference of opinion upon the bench than any other; but, on the other hand, I think the public would be, to a certain extent, the gainers. I think, with respect to the services of police magistrates, as in every other case, the state ought to act upon the principle upon which a man

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acts in his own private affairs, viz. to get the best workman, and pay well; if you do not pay him well, you will not get the best workman; and, again, if you do not work him well, he will cease to be a good workman. I think the magistrates are not sufficiently worked to be good public servants; it appears to me that a man who has one-third of his time wholly unoccupied, one-third partially, and only the other third fully occupied, is not sufficiently employed about his duty. I do not speak that reproachfully, of myself or of any other person; but, speaking from my own personal feeling, I am more able to do work, if I am constantly employed, than if I am only occasionally employed; I find the more work I have to do, the better I am able to do it; it is not a reproach upon myself and my brother magistrates that we are not sufficiently worked, for we have no more work to do.

420. What qualification would you require for the appointment in future, were the salary raised, say to 1,200*l.* a year, and the police office were more on the footing of a court, both with reference to its proceedings and its construction, so as at once to improve the character and the emoluments of the office?—I think a standing of seven years at the bar would not be too strict a limitation. It should not be under seven years, because that, at any rate, secures the opportunity of having had some experience on circuit, or at session, which is very important. I think, however, it is one of the ingredients, and a most important one, of a police magistrate's duty, that he should be conversant with the feelings and habits of people of all classes; he should not be merely a lawyer; that will not answer the purpose at all; but a man who can talk to them upon their own habits or trades, who can make himself understood by them, and let them see that he understands their relations to each other and to him.

421. With reference to the proceedings and practice of the offices, should they be made analogous to courts of justice?—The more you could do so the better.

422. What would be your opinion as to the expediency of a police magistrate sitting as judge, with the distinctions of a member of the bar?—I think it would probably have the effect of causing a little more order in the office, and if it does so in the least degree it would be an advantage. I see no objection to it whatever.

423. Do you think it would have a good effect upon the administration of justice, both with regard to the judge himself and to the public in attendance?—There is no doubt of it. If a man is in a conspicuous situation, he does not take part with the community around him. Our office is particularly inconvenient in that respect; there is one large room, and all the rest consists of crannies of one kind or other, which we do make use of; but it is very inconvenient and extremely noisy.

424. The public would pay more respect to the administration of justice if this arrangement were adopted?—There is no doubt whatever that would be an essential part of the change—giving our station more of a judicial character.

425. Are there any waiting-rooms at present for the witnesses in attendance?—No; they are very defective in that respect.

426. Have you not heard it made a matter of complaint in the public journals that there is a want of a considerable enlargement of the premises for the convenient administration of justice, and that, in particular, there is the want of a convenient waiting-room for witnesses, so that females, and witnesses of a respectable description, may not be mixed up with the constables, and the crowd of a very questionable character, which often fills the office?—I cannot say I have seen it noticed publicly; but I think the public who come to our office must be very good-natured if they do not feel it, whether they remonstrate against it or not, for it is a very great inconvenience.

427. It has been stated, in the public journals, that "respectable witnesses, vagrants, prostitutes and diseased paupers have to wait, before their cases are heard, in one miserable room; and the ears of modest females, who have occasion to attend, are annoyed by the language they constantly hear;" must not that be the fact, from the present construction of your office?—It must so, and we continually have complaints made, though only in an indirect way. In fact, every respectable person constantly commences his address to us, by saying, "I have not been in the habit of being in such a place as this before," as a sort of apology for

for being there at all, so that the magistrate may conclude that it is something extremely unpleasant to his feelings to appear before him.

428. Would it not also be a convenience, bearing upon this branch of the inquiry, were the hours of attendance altered, in so far as an extension of the hours from ten o'clock in the morning till five o'clock in the afternoon, and the abolition of the evening sittings?—I think it would be a great relief to the magistrates, and enable him to employ that period of his time in constant occupation, without any degree of fatigue. With reference to the public, I am not competent to answer that question; but at the same time, I think the inconvenience, if any, would be very trifling, particularly connected with the arrangement I have mentioned, with respect to taking recognizances, which would prevent foolish and unmeaning charges being received at the station-house, or parties being imprisoned upon them at the station-house.

429. Mr. *Elphinstone.*] Is not the evening sitting very convenient to tradesmen and other persons connected with their business in the day-time?—Very seldom, I think.

430. *Chairman.*] It has been stated, that few charges brought before the magistrates in the evening, after seven o'clock, are ripe for inquiry, and in many of the cases they are remanded until the following day; is that the fact?—I cannot speak to the proportion; but I cannot call to mind any one case in which any public inconvenience would be occasioned by the absence of the magistrate after seven o'clock in the evening.

431. With regard to the hour of commencing business, do you think eleven o'clock is preferable to ten?—We always begin at half-past ten; we have done so for the last two or three years; I may say never after a quarter before eleven.

432. On the subject of the extension of the criminal jurisdiction of the stipendiary magistrates, what is your opinion as to giving them a summary power over all cases of simple larceny, and without reference to age or value?—I do not think that any public injury would be done by it; but I am not capable of saying how far it would receive public assent; I think it would be a very easy mode of saving the public expense, without doing any injustice to the person charged; I believe no injustice would be done; at the same time, I cannot take upon me to say how far I ought to be intrusted with such a power myself.

433. With reference to the summary power, with a limit as to age and value, what is your opinion as to that?—I do not think that ought to constitute a difference; the value has nothing to do with it at all; it is a question of the man's guilt or innocence, and it does not matter whether he is guilty of stealing 10*l.* or 1*s.* With reference to age, also, I think that does not constitute a legal distinction; for a boy of 15 has as much right to be tried by an infallible judge, if there is such a thing, as a man of 50. I think in those cases where a party admits that he is guilty of the offence, and probably some of those cases in which it is most apparent, and the conclusion is irresistible, that he is guilty of the offence, it might be intrusted to the magistrates, for it seems a monstrous thing that a magistrate under the Police Act has a power to conclude a person's guilt from very slight premises, and that he has not the power to conclude his guilt from the most undeniable premises, namely, his own confession.

434. Then in cases where the party either pleaded guilty, or consented to be tried by the summary jurisdiction of the magistrate, you think there would be no objection, even in the public mind, to such an extension of the jurisdiction?—I should conceive not; the only question to be kept in view in this case is, "Has the party had fair play?" and where he confesses himself guilty, or says, "I will leave it to you to say whether I am guilty or not," there is no doubt that he has fair play.

435. Do you think such cases would form a large proportion of the whole number brought before a magistrate?—A very considerable portion, together with those in which he has now the power to act summarily, under the Police and Vagrant Acts. There is no doubt a magistrate now exercises indirectly that species of jurisdiction to a very considerable extent.

436. By what authority does he exercise that jurisdiction?—Chiefly under the Police Act.

437. Will you describe a case in point?—I will put an illustration of it: a person is stopped carrying property in the street; he gives some account of it to the constable, which is not satisfactory to him; he is detained and brought before a magistrate; he states either the same or a grossly improbable story to the magistrate; in that case, by law, the magistrate has the power of fining, and

 imprisoning

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imprisoning in default of payment of the fine, under the Police Act. Now that is giving him the greater, while you deprive him of the less power; for if the fact of a felony is proved instead of being doubtful, or merely suspected, as in the case under the Police Act, the party is better off, or is supposed to be so, upon having the full proof brought against him, in being sent to a jury, than in having the case left in partial obscurity; but, in point of fact, many of those cases which, upon full proof, amount to a complete felony, are treated as unlawful possessing, as it is called, under the Police Act.

438. In point of fact, then, had the magistrates a summary jurisdiction over offences such as you have described, would that be any great extension of the power already confided to them under the Police Act, under the Vagrant Act, the Petty Trepass Act, and under the Acts commonly called Peel's Acts?—There are many special provisions in those Acts which give him that power indirectly.

439. Then if the power be possessed to the extent which you admit, would there not be a very great advantage accruing to the public in that way, by the summary trial of offences of the description mentioned, viz., that in all probability the punishment would follow more immediately upon the offence being proved, and all imprisonment previous to trial would be avoided?—Certainly it would be attended with those advantages.

440. Do you not think it would tend to diminish crimes by at once punishing the offence, keeping in mind that the great majority of such offences are committed by boys?—Yes, it would have that effect; the promptitude of the punishment is a great object, provided there has been sufficient time and sufficient diligence employed in examining the case; and I think it would be very expedient, further (and that is the only distinction I now make with regard to age), that in all cases of offenders under a certain age, the magistrate should have the power to avoid the sending the party to prison by directing personal chastisement to be inflicted, and the party to be dismissed. We find that a very salutary punishment, but we have no power legally to exercise it except on the application of the parents of the accused; and to avoid sending a party when very young to the house of correction, we submit to them the alternative; and they invariably adopt the course of requesting that he should be punished by the officer, that is, to a certain extent,—a course perfectly legal; for a father has the power to order any person to chastise his son, instead of inflicting the chastisement himself.

441. If the summary jurisdiction proposed over larceny were attended with this qualification, that the magistrate should have the power in every thing relating to complicated matters of fact, to either summon a jury or refer the case to the court above, and that on points of law he had the power of obtaining the opinions of the judges, in the same way that it is proposed to give recorders the power of obtaining the opinions of the judges where legal points of difficulty occur, what would be your opinion?—I think wherever such a case should arise he ought not to deal with it; I think wherever he requires to refer to any other tribunal for instruction or information, a magistrate should not deal with such a case; he should only deal with such cases as are quite apparent as to the law, and very plain as to the facts.

442. Then, may it be understood, from what has been said, that your opinion is that such a summary power might be intrusted to the magistrates with great advantage to the public, and that the public would not be in any way injured by intrusting to the magistrates a discretionary power to refer it to another tribunal?—Yes; in the event of the magistrate having such a power, I presume, being a man of discretion, the moment he had any doubt as to the facts, or the construction to be put upon the Act, he would send it to another tribunal; but he is in the course of inquiry into the law or the facts up to the time when he comes to decide the matter himself, or to send it for trial; he is preparing the case for trial, and if, when the case comes before him, it is so undisputed in its facts, and the law is so clear, that he has no doubt in his mind as to the exercise of the power intrusted to him, it would be a very fit occasion to exercise it; but if he thinks the facts are not quite clear, or the facts being apparent it is not quite free from doubt as to the criminality of the act, it would be his business to send it to another court for trial.

443. Should persons, whose opinions are entitled to weight, think the abolition of trial by jury in the cases mentioned an evil, have you any suggestions to make by way of protection to the subject, as an equivalent, for instance, by giving him a right of appeal?—I do not think the right of appeal, after you have passed your

your sentence, would be an adequate compensation to any man, because he is submitting to your erroneous judgment until the appeal is heard; I think you must intrust the power absolutely to the magistrate, or deny it to him altogether; I do not mean to say he is to be called upon in the first instance, when he enters on the inquiry, to say whether he will deal with it summarily or send it to trial; but if he has the power to deal with those cases summarily, you must allow him to deal with them finally; I think, upon inquiry, it will be found, the species of criminal jurisdiction which you are now alluding to is exercised, more or less, to a very large extent, at every petty sessions in England, more especially in London, because the powers under the Police Act are much more extensive than they are under the Vagrant Act, particularly with regard to the possession of property, not being able to give a satisfactory account of it; and it is very desirable that that which is done, particularly with relation to the punishment of crime, should always be done directly instead of indirectly.

444. Supposing the summary jurisdiction to be extended, what is your opinion as to the best punishment which could be devised with a view to repetition of crimes by juvenile offenders?—I think the present system of punishment is extremely defective in all respects, because I think it does not take into consideration the habits either previous to or those which are likely to result from the punishment of the individual; in fact, it is one indiscriminate mode of punishment for all offences of the same denomination, whatever may be the previous character of the offender, or whatever may be his situation or condition as to the probability of repeating the offence; that is to say, if I have a little culprit brought before me for a larceny, perhaps that boy has a father and mother, and the means of living honestly; if he has committed the offence out of the mere love of theft, or for the indulgence of any idle propensity, a different mode of treatment should be adopted with reference to him and with a boy who is situated differently, who probably has neither father nor mother, and who is driven, when he comes out of the house of correction, to the commission of felony by a natural law, for the mere purpose of his support; now, I do not think that is a matter which is ever investigated or acted upon at all, with regard to the administration of this secondary punishment of sending to the house of correction; in proof of that, I will show the Committee a document, which I think is of great importance, as it demonstrates, to my mind, that the house of correction may be a punishment, but it is not a reformation, nor has it a tendency to reformation; that is a list of the convictions of a boy, aged 14, who was brought before me on Saturday night, for a felony, which I had no power to deal with except under the Vagrant Act; because I wished to try the experiment with him, by committing him under the Vagrant Act, I held it out to him that I should commit him the next time as an incorrigible rogue, and send him to the sessions; I thought that, probably, as a new mode of dealing with him, might have some effect upon his mind, as it was evident that the repeated committals to the house of correction had no effect whatever.

[*The Witness delivered in the following Paper:*]

M Station.

CHARGES against *Thomas M'Nelly*, aged Fourteen Years.

DATES.	CHARGE.	MAGISTRATE.	DECISION.
1836:			
15 April	Wilfully breaking several squares of glass at St. Saviour's church.	J. T., Esq.	7 days.
30 April	Sleeping in the open air at St. Olave's	Sir C. Hunter	discharged.
29 May	Stealing 14 pounds of coals from a barge	H. W., Esq.	1 month.
6 July	Stealing a bag containing brushes, &c.	J. T., Esq,	3 months.
17 November	Stealing two bundles of wood	H. Weston, Esq.	discharged.
23 December	Stealing carrots from a barge	H. J., Esq.	14 days.
1837:			
31 January	Stealing a piece of cheese from a shop at St. Saviour's.	Alderman Lucas	3 months.
29 April	Stealing a pair of drawers at Bermondsey	J. T., Esq.	1 month.

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445. It appears that between the 15th April 1836 and the 29th April 1837, he was charged eight times with sundry offences, and that for six out of the eight he has been imprisoned for various periods?—Yes.

446. Now, do you think that the system of imprisonment as it exists in our present gaols and houses of correction is likely to reform or to deteriorate?—That is a practical proof that it has worked no reformation in that boy; in all probability it has done the contrary.

447. Is not the system of classification at present adopted altogether inefficacious, as regards the degrees of moral guilt in the individuals, upon which it is presumed it is alone founded?—Entirely so; I believe the classification in the gaols and houses of correction has no reference to the circumstances under which the crime was committed, but only to the character of the offence; that is to say, a man who steals to satisfy the cravings of hunger, is treated in precisely the same manner as a man who steals to gratify his desire of gain.

448. Lord *Hotham.*] Has that boy been in various houses of correction, or only one?—I think they are all committals from the Surrey side of the water. That boy has no father and mother: now when turned out of the house of correction, it is natural to suppose he must go to thieving again: I have held that out to him, that I should send him under the Vagrant Act to the sessions, and they will deal with him in some very dreadful manner there, which he does not understand, and it is his not understanding the nature of the punishment that he may meet with that is the terror; but knowing he is to go to the house of correction for a certain number of days has no terror upon the mind of such a boy; they call the treadmill the "stepper," and when they are sentenced to it, they say, "Oh, we shall have so many days at the stepper, that's all."

449. Has he been flogged?—No; flogging I should like very much to have the power of inflicting; we have the power of flogging in one case, that is the case of unlawful pawning, and we find that a very efficacious punishment.

450. *Chairman.*] The two first charges in the list are extremely light, the first being breaking windows, and the next sleeping in the open air?—Yes, that charge of breaking windows is a perfect specimen of what one has observed in these matters, that the house of correction is the general receptacle for every thing you do not know what to do with; you send them there when the crime arises from long confirmed habits of thieving, and when it is a mere casual breaking of a window, which the party cannot pay 2*s.* for.

451. But were the summary jurisdiction alluded to, combined with such a state of prison discipline as should prevent the depravation of morals, do you not think in all probability that a very material effect would be produced upon the amount of crime?—I have no doubt it would tend most materially to reduce the amount of crime.

452. Is it not a fact that the greatest number of the perpetrators of offences are boys, who begin by some slight offence, and who, becoming hardened by frequent convictions and frequent imprisonments, they, in the end, commit some serious offence, which ends in transportation?—That is commonly the course of criminality; but there are a great many cases where the children are regularly tutored, and sent out to thieve by their parents. I have at this moment two boys in confinement in the house of correction at Brixton, whose father is a carman, receiving 24*s.* a week. He belongs to the parish of Bermondsey, and I sent for the parish officers, and told them, as soon as these boys came out, I should call on the father; I did not wish to interfere with the Poor Law Act, but I should call on him to assist me in keeping his children out of theft; and if it were possible in such cases to make the parent suffer for his own negligence in bringing up his children, by making him pay their expenses, when they were in a place of confinement, I think it would have a very salutary effect.

453. Supposing there were something like the principle of restitution legalized, do you think that would have a wholesome effect, not only on the parents, with reference to offenders of a tender age, but also on criminals even in more advanced life?—I have always thought that the law of England was erroneous in that respect; it ought to be part of every sentence, particularly with respect to larceny, that the party should be made to make restitution to the full amount, and probably beyond, together with all expenses, before his sentence shall cease. Instead of allowing a man, when he goes out to New South Wales, in a few months to get his ticket of leave, and before he has repaid

repaid the Government, or reimbursed the party who has been at the loss of his goods, instead of allowing him to have the benefit of that ticket of leave, he should be kept at work until he has made that recompense.

454. With regard to the restitution of property fraudulently obtained and withheld, would it not be expedient to extend the power of the magistrates?—Yes, we have a certain extent of power in that respect now, and I think it would be advisable to extend it further. It ought to apply to all cases where persons in possession of the goods are persons liable to receive stolen property, from the mode in which they conduct their business, all description of brokers, dealers in second-hand property, who are more likely to receive stolen goods, and ought to exercise more caution in inquiring into the description of persons they deal with. I think the power to order restitution of property, under these circumstances, might be very safely intrusted to magistrates.

455. You have been asked some questions with reference to imprisonment; will you now give the Committee your opinion of corporal punishment with reference to juvenile offenders?—I have already stated, if one were allowed to direct corporal punishment to be inflicted upon all offenders under a certain age, it would be a very good substitute for the house of correction, and would prevent, at any rate, the evil effects of the house of correction, if it did not produce the good effects.

456. In the case of assaults, would it not be desirable to authorize the infliction of hard labour, and that by summary conviction?—I think, in the case of assaults on police constables, it ought to be so, and probably it would be very desirable in cases where persons were guilty of a repetition of the offence within a certain period of time; in gross cases of assault the punishment of the common gaol is no punishment at all.

457. But when an assault occurs between a person of the upper classes and a female, such as we have read of recently in the newspapers, would it not be desirable to give the magistrate a summary power in such cases, or that he should have the power to call for such sureties on the part of the defendant, for his appearance to take his trial, as should ensure the ends of justice?—The magistrate has the power now, upon all occasions, to send cases of assault to trial, if he thinks they are cases of sufficient magnitude; but I think, where he deals with them summarily, there are many assaults of that peculiar nature, which it would be very desirable he had the power to send to the house of correction instead of the common gaol.

458. Instanter, on proof of the assault?—Yes; at any rate, as an alternative in default of payment of a fine.

459. But the object being the punishment of an offender, to whom the fine is no object, and who the magistrate is aware would pay the fine the moment he is convicted of the assault, would it not be desirable to give the magistrate the power of fining, and also of sending the offender to prison, should he have reason to believe that the matter will be compromised, and the ends of justice defeated?—He has the power of doing the same thing now indirectly, for if he thinks such is the case, that his jurisdiction is not tantamount to the due punishment of it, he has nothing to do but to bind the parties over to the sessions, and they have the power to inflict hard labour.

460. Does it not often happen that the charge is compromised, and justice is defeated?—The public are not much interested in those things; if the party who has been aggrieved is satisfied, the public share of the injury is but small in most cases of assault; so that I believe it is a very common thing, at most sessions, to allow the parties to compromise these matters.

461. But where the case is one of an assault by a man of superior rank on a female, do you think the public are not interested in preventing the repetition of such offences, without reference at all to the peculiar interests of the individual?—That would be a very gross case; but I do not know whether it would be advisable to intrust a matter of that kind to the magistrates, for the power of sending a man, in a high station of life, to the treadmill or to the house of correction, even although he may have been guilty of that enormity, is a large power to intrust to the judgment of one man, and particularly when he may be acting under a state of excited feeling; because, if the offence is of that nature, it is one which would excite a great deal of indignation.

462. Where power is given to commit to the common gaol or the house of

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correction, as the case might be, do you think there would be any objection to that?—I think there ought to be that alternative with respect to assaults.

463. You are aware, under the Gaol Act, there is a power to the magistrate to order them to be confined separately, if they think fit?—Yes, but it is certainly very injurious to a certain class, from the contamination of the society there.

464. Have you not found much inconvenience and frequent breaches of the peace arise from the use of insulting language between parties, which is not in any way punishable?—I believe nine-tenths of the assaults that we hear of, commence in abusive language, or provoking and insulting behaviour; and as it is always desirable to avoid the beginnings of strife, I think it would be advisable to have the power to prevent such acts from being committed, by calling on the party who has been guilty of such language or behaviour as is calculated to provoke a breach of the peace to enter into his recognizances, with a notice, that if he repeated the same language to the individual, the recognizances would be forfeited. At present, the difficulty is very great, so much so, that when a complaint is made of assault, the party will say, "This man has been calling me a thief; he has been standing before my door, and doing every thing to induce me to commit a breach of the peace. I came for a warrant, and you told me you could not grant a warrant, and therefore I took the law into my own hands." That is the answer to many charges of assault, and it is founded in reason; and yet we have no power effectually to stop the grievance of which he complains.

465. Would it not be desirable that there should be a power to mitigate penalties?—I think there should be a general mitigating clause introduced into the Act of Parliament; it is a great inconvenience and absurdity that there should be one punishment for an offence committed by one man, and another punishment for the same offence committed by another man.

466. With regard to disputes between masters and servants, is not the law exceedingly deficient at present; is there any power to settle those matters?—There is no power to settle disputes with domestic servants, and that ought to be introduced into any Act upon this subject; upon all those matters which have been mentioned, we have 10 or 12 or 20 applications from persons who have no remedy, unless they could get it from the magistrate.

467. Domestic servants, who want to recover their wages or boxes which are withheld, have no remedy, except by an action at law?—No; they try all sorts of ways to raise our jurisdiction, and the common way is to come and raise a charge of assault against the master when he has compelled them to leave the house; and we sift the matter as well as we can, and find that the assault warrant is taken to get the wages, and we say, "It is of no use taking a warrant, for it will turn out to be no assault, and you will lose the expense of the warrant, and you must go to the court of requests after all."

468. In the case of wilful damage by a tenant, is not that a fruitful source of quarrels of assaults?—It has been; the Wilful Damage Act does not apply to a case where there is a subsisting tenancy; I think that Act might be very properly extended to such cases; I do not see why, as a man can steal, he may not also wilfully damage the property.

469. Does it not often happen, in a case of death among the poorer classes, that property is in dispute and sometimes wasted, because there is no power to put it in safe custody until some proper claimant can be ascertained?—Yes.

470. Do you think some simple mode might be devised by which small property of that description might be held in safe custody, and also under the jurisdiction of the magistrates?—It might be held in safe custody, and so remain, until the legal means were taken to decide who is entitled to the property; that would be a question probably of executorship or administration, and that would be decided by the courts having jurisdiction; but we have applications repeatedly by persons who say, "My father, or mother, or sister, is dead, and left such and such things, and my brother or relation has taken them away and set off, and we shall lose them." That is the application we perpetually have, and there is no prevention or check to that, as far as I know, except an application to the Court of Chancery, or other courts, which are not within the reach of the persons making the application.

471. In the cases of wages which I have alluded to, and those arising out of wilful damage, I believe no new law would be required, certainly no new principle

ciple would be established, and all that would be required would be this, more clearly to carry out analogous enactments?—Yes, it would be the simplest thing possible in the case of servants; it would be all cases between masters and servants of wages, and all cases of wilful damage to property by tenants or otherwise.

472. With regard to the detention of houses, have you any suggestion to offer to the Committee?—With regard to the detention of houses, I think it is a very great hardship to persons having their houses let to small tenants, paying weekly or monthly rents, that they have no way, without incurring the risk of a breach of the peace, to get rid of them; I think that the magistrates might have the power to interfere in such cases with great advantage. I also find, with regard to the settlement of petty trespasses, there is a great complaint, and those matters might be adjudicated upon with great advantage by the magistrates. All cases of detention of property, petty trespasses, and all cases of malicious damage which are not included in the Damage Act, questions between masters and servants, and even, to a certain extent (probably to the extent of the court of requests, if it were thought desirable to abolish such courts), all questions of contract and all questions of debt,—all such matters might with perfect safety, and greatly to the public advantage, in compliance with the urgent demands of those who want such assistance, be intrusted to the adjudication of the magistrates.

473. Now, those points which have been brought under your consideration, are they such, were they accomplished, as in your opinion would confer decided benefit upon that class of the population more immediately coming in contact with police offices?—I have not the slightest doubt of it; as I stated before, we have, on every one of those points, daily applications, which take up a considerable portion of our time, and they are made with so much perseverance that it is with great difficulty we can get rid of the applications, and it is always to the dissatisfaction of the parties; they go away complaining, "Must I lose my goods or submit to this grievance?" as if the magistrates had the power to interfere, and they would not do so.

474. Have you read the Report of the Police Committee in 1833, and the evidence, to which that Report refers, of Mr. Murray, who was then senior magistrate of Union Hall?—Yes, and I quite concur in the necessity which he points out, and would carry it further than he has there stated; the only matter I do not exactly concur in, is as to the expediency which he states of affecting a jurisdiction; that was done, I believe, at our office, as a mode of obtaining that which the law had not given us; but we found it was attended with such bad consequences that it was abandoned; it is inconvenient to grant a summons, and afterwards to submit to the party's not very civil way of putting it, that we have no jurisdiction.

475. Then you think it better to keep within the limits of the Act of Parliament, and not to affect a jurisdiction which you do not possess?—Yes, for though you may succeed in particular cases in reconciling parties and in doing good, you run a risk of great evil by having your authority disputed.

476. Now as a considerably more extensive jurisdiction would be conferred upon magistrates were these objects made matters of legislation, do you think it would so add to the amount of the magistrate's labour, as to alter your opinion as to the number of magistrates and the number of offices?—It is impossible to anticipate what would be the effect, but as you have already got as many magistrates as I suppose you ever will have, you will have nothing to do but to suppress the appointment of magistrates as you find them superfluous; if you found the duty accumulate by means of these extensions of your police districts, you may then retain many of your magistrates, or fill up your appointments according as the emergency should require; I see no difficulty at all in adapting it to the state of things which may hereafter arise when the change takes place, but to what extent it may be necessary, I cannot say.

477. I think I have distinctly collected your opinion to be this—that were this species of jurisdiction given to the magistrates, a great deal of oppression and disturbance would be redressed and prevented on the part of the poorer classes?—I have no doubt of it at all; and it seems to be the universal opinion. Upon looking back, in the Mirror of Parliament, to the debates on Lord Brougham's and Lord Althorp's Bills, there seems to have been such a concurrence of opinion as to the necessity of such a provision, that I am

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surprised it still remains to be talked about. The only way I can account for it is, that Lord Brougham carried his measure too far, and made it too much of a court, and it included a jury. Now I think the essence of any thing of this kind is the exclusion of a jury altogether; for it is a jury, and the consequence of a jury having advocates, which creates the whole expense and delay, and the whole perversion of justice. I have a great respect for a jury, but, with the exception of a special jury with a good judge, I do not conceive it is the best tribunal to be referred to in these small matters. If you have a jury, you must have advocates, and if you have advocates, you have expense and delay; and you have, I think, very commonly an interference with the course of justice. I should say a jury is on all occasions to be avoided in any jurisdiction you give a magistrate; the criminal jurisdiction you give him should be one he can exercise himself; and the civil jurisdiction, if you give him any additional jurisdiction, should, to a certain extent, be intrusted to his own discretion. You might possibly extend that beyond what you would intrust to his own discretion, by giving him the power to compel the parties seeking for redress to refer or to abide by the judgment come to by the referees, and on refusal to do so, to forfeit to the party acquiescing a certain sum, limited to that sum to which extent he has a sole jurisdiction, leaving the parties in the latter case to proceed by their remedy at law.

478. Mr. *Clay*.] Do you not find that the ends of justice are often defeated, and that criminals escape, from the reluctance which the parties injured have to incur the expense and inconvenience and loss of time of prosecuting?—Such cases do arise, unquestionably, that people will not come forward unless they are compelled to do so, and it very often happens that the magistrate does not feel inclined to compel persons to come forward with cases which would otherwise have gone to trial, and so converts them into cases of petty jurisdiction perpetually, at the earnest solicitation of the parties who would otherwise be prosecutors, and who would be put to great inconvenience and trouble if they were sent to trial. Many cases are also lost in consequence of the principal witness being a person who is about to go away from the country, and it would be most unreasonable to detain him to give evidence.

479. That is a difficulty of another kind, and which new improvements in our system of criminal law might obviate; but do you not think that the inconvenience arising from the reluctance of parties to prosecute might be obviated by the appointment of some officer in the nature of a public prosecutor?—I think that is of the utmost importance, and I think it becomes more apparent every day; since the Prisoners' Counsel Bill has passed into a law, it becomes more apparent every day that cases are perpetually lost upon what you would say, *primâ facie*, was the clearest evidence in the world, from the want of some person to attend to the prosecution; I should say there ought to be a permanent establishment, as in Scotland, by the Advocate's depute, whose business it is to attend to prosecutions on behalf of the Crown; or, where that is not the case, in cases where magistrates commit, the magistrates (particularly in cases of any magnitude) should have the power to certify that it was a fit case to be prosecuted by counsel.

480. In addition to the cases which have come under your own observation, in which criminals have escaped, from the reluctance of parties to prosecute, do you not suppose also there must occur many instances which never come before the magistrates at all, arising from the same reluctance?—No doubt of it whatever.

481. That is to say, the offence being committed, the injured party abstains even from taking the first step of coming before a magistrate, from the certainty that, if he takes that step, the magistrate will insist upon his following it up?—Not a doubt of it; a great many charges are entirely suppressed, from the inconvenience the parties will subject themselves to if they bring him before the magistrate at all.

482. Is not also the commutation to a smaller punishment, which the magistrate has it in his power to inflict for the graver punishment, which would be the result of sending the offender before a court of justice, is not that also a defeat of the ends of justice?—So far as the magistrate's powers are not adequate to the full amount of the offence.

483. Then the result of your opinion is, that any system of police, and, indeed, of criminal judicature, is incomplete which does not comprehend an officer specially

specially charged by the public to bring offenders to justice?—I think it is incomplete in very many cases unless there is, and it is desirable in all cases; there are some cases which must fail in the present condition of the criminal courts of this country, with the power of the prisoner to have counsel to defend him, I should say, must fail in London, as a matter of course.

484. Then do you apprehend the inconvenience sustained by the public is two-fold; first, that the inconvenience dreaded by the individuals prevents their giving notice of an offence committed, thereby taking the first step to punish the offence; and, secondly, that individuals, if they be disposed to follow up the offender before a court of justice, the ends of justice are defeated, from their not being competent to the task?—I do; I think it is very commonly the case; I think the hardship a man sustains whose time is of value to him, and who does not like going before a magistrate at the police office; the hardship he sustains by being obliged to attend there at the getting up of the case, and to go before the grand jury at the Old Bailey, and afterwards to attend at the trial, and to be subjected to the cross-examination of an ingenious counsel, without any reply by a counsel of his own, which places him in a ridiculous point of view: all those are things which very easily account for the party's reluctance to come forward.

485. Are you aware of any difficulty, in practice or in principle, to the appointment of such an officer?—None whatever; in point of fact, such an officer exists in Scotland and most other countries. In this country, at some of the quarter sessions, the same principle is acted upon; at the West Riding sessions, it is a matter of course that every case is prosecuted, and the chairman gives the clerk of the peace directions to make out a brief for every case of felony which comes before him.

486. *Chairman.*] How does the clerk of the peace get his expenses?—He is allowed to charge only a guinea for each counsel's brief, unless it is a case above the ordinary description.

487. Mr. *Clay.*] Is it not altogether a false principle to leave the punishment of offences, which must in reality be considered as committed against society at large, to the operation of the wounded feelings of the individual who, in any particular case, may happen to be the person suffering from the offence?—Unquestionably, it is doubly objectionable. In the first place, it is a great hardship that he should be a person put forward in that way, he having been a sufferer in the matter; and there is this injurious effect in bringing him forward, probably as the principal witness, that he is exposed to the suspicion of having all the feelings of a partisan.

488. *Chairman.*] With regard to offences committed upon the river, would there be any difficulty whatever in any office having the power to hear and determine them?—They have so much gone to the Thames Police, that I dare say they are more expert and better understand those cases; but they do not appear to me to be cases, looking at the law, which a magistrate would not be able to make himself master of in a very short time; and if the jurisdiction be transferred to the Metropolitan Commissioners, I have no doubt they would find theirs the most convenient office, without reference to the Thames Police particularly.

489. With reference to the warrants issued by the Thames Police magistrates, is it not desirable they should run through the City without any interruption?—It is very desirable it should be so, and *vice versâ*; I suppose the City would make an equal exchange upon these matters if applied to; it is an obstruction, so far as it goes, to the course of justice.

490. With regard to the informers, have you any thing to offer?—I think if the change I have suggested, of taking away the minimum fines, and allowing the magistrates to decide what share of the penalty the informers ought to have, were granted, that would put it into the magistrate's power to destroy the practice of common informations, and leave it, so far as it would be any benefit, to the public.

491. It would take away the motive for vexatious informations?—Yes.

Lunæ, 8° *die Maii*, 1837.

MEMBERS PRESENT:

Lord Hotham.	Mr. Robert Clive.
Mr. Estcourt.	Mr. Alderman Wood.
Mr. Clay.	

MR. HAWES, IN THE CHAIR.

James Traill, Esq., again called in; and further Examined.

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492. *Chairman.*] HAVE you any thing to add to the evidence which you gave when you were last examined?—I have to add, with respect to the extent of jurisdiction, that was a subject that was rather brought on me by surprise; I should say, with regard to the extending of the jurisdiction to the Central Criminal Court district, that if that were intended, it would require an addition to the number of offices rather than a diminution; I think there could not be less than 10.

493. Lord *Hotham.*] Can you describe the district over which the Central Court has jurisdiction?—I cannot exactly describe it, but it is laid down in a very explicit manner in the Central Criminal Court Act, and I think the extreme distance on the Surrey and Kent side does not exceed, any where, eight miles from the Post Office; it goes beyond the limits of the Metropolitan.

494. Mr. Alderman *Wood.*] Suppose that the Town Hall could be made useful for the purpose of that district to which your office is so near, what would you propose with regard to your office?—We have been very much wishing that were the case; I think it might be a great service; our office might then be removed farther in a south-westerly direction.

495. Newington way?—We have been suggesting a site opposite Bedlam, that would be a good situation. Supposing there was to be an office in that neighbourhood at all, that would be the best situation that there could be; and we have some hopes that the City will be very favourable to us. There is an angle which directly fronts Bedlam, which would be a very favourable situation.

496. *Chairman.*] Provided the alterations in the law were carried into effect which have been spoken of in your preceding examination, and provided also an extended jurisdiction was given to the magistrates, would it not be desirable materially to alter the internal arrangements of police offices, and to arrange them more as courts with convenient waiting-rooms for the witnesses, and also with a building adjoining as a temporary lock-up house?—Certainly that would be most desirable; we daily find the want of such accommodation to an extreme degree, so much so, that in our office the greater part of the labour that we have, and the greater part of the inconvenience we suffer, is not from the business but from the place where we sit; and the public are exposed to the greatest possible inconvenience, to such a degree that it keeps away many persons from the police office who would otherwise come and obtain redress there; particularly with reference to the latter branch, as to the lock-up house, we are in a most deplorable state; although we have put the Government to a considerable expense of late, it is still most defective.

497. Mr. Alderman *Wood.*] Has it not been extremely inconvenient, the sending over prisoners from Surrey for examination into Westminster at Queen-square?—I believe exceedingly so; and some months ago, in consequence of representations made by the police to that effect, the magistrates of Union Hall expressed their readiness, if it was agreeable to the Commissioners, and approved of in other respects, to take all the charges arising on that side of the water.

498. Did it often occur that 10 or 12 policemen were employed in conveying a less number of prisoners over to Queen-square?—I cannot say that of my personal knowledge, but I have no doubt it must have happened; we have now five divisions of police at our office.

John

John Hardwick, Esq., called in; and Examined.

499. *Chairman.*] YOU are senior police magistrate at Lambeth-street?—Yes.

500. How many years have you acted in that office?—I think now about 17.

501. Can you suggest to the Committee any amendments in the present Police Act?—I have not turned my attention particularly to the amendment of any of the clauses.

502. Do you think it desirable to retain the qualification by estate?—I should think not.

503. What is your opinion with regard to making a provision to authorize the Commissioners of Police to detain in custody a constable charged with misconduct till he can be taken before a magistrate?—I should think there could be no objection whatever.

504. With regard to the fees charged at the office, is not a charge made upon every summons and warrant, per mile, called a mileage fee?—Yes.

505. Is there any legal authority for that charge?—Not in the Act, that I am aware of; but it is a thing sanctioned by long usage.

506. Would it not be desirable, if fees are charged, that they should always be legalized?—Yes; these are so very trifling that it is a matter of no very great consequence, the fees arising from summonses.

507. Would it not be better and fairer to make them alike on all summonses and warrants, without reference to distance, so as to prevent disputes about the distance?—We have sometimes to send a considerable way into Essex; for example, with regard to carters and others; there the expense of sending a man down, as we do, is very considerable; and in order to avoid the hardship that may fall on some of these men, we now send it by post to the master of the driver; perhaps it may be for sleeping in his cart, and then, if he did not attend to the summons by post, we send down there and deliver by hand, which very much increases the expense; we sometimes run down as many as 7, 10 or 14 miles.

508. Mr. Alderman *Wood.*] Almost as far as the hay carts come from?—Yes.

509. If they are convicted, you charge them the expenses?—Yes, but we find the expense, without the twopenny post, would come to much more than the fine imposed. Suppose a man was sleeping in his cart, we should fine him 10*s.*, and the expenses would be quite as great; therefore we adopted the plan of sending it down by post.

510. *Chairman.*] Will you turn to section 24 of the Act, and inform the Committee whether, in looking over that section, many cases of injury to individuals have not occurred, for which that provision is not a sufficient remedy?—Yes; I recollect distinctly some few years back there was a sort of show or performance at a house in a street, where the announcement of the performance was by blowing a horn and making a disturbance; and I recollect, on the neighbours complaining, we had great difficulty in suppressing the nuisance; we threatened to have them indicted at the sessions as a nuisance, but there was no mode of summarily preventing that person from making a noise with his horn.

511. Could you suggest to the Committee any alteration or extension of the clause, that will meet the case of the nuisance to which I have alluded?—I would suggest that the enactment might be framed thus: blow any horn, or use any other noisy instrument for the purpose of announcing any show or exhibition, or for hawking, selling or distributing any article whatsoever.

512. Will you turn to section 25, and state whether or not it will be desirable to extend that section to cases of offences by persons riding on horseback, and also to cases where persons or property are in danger, though no actual damage or hurt ensues?—I should say certainly, with great advantage.

513. Mr. *Estcourt.*] Do you think that the provisions of that clause are sufficient now to prevent the inconvenience that is sustained by foot passengers when the crossings of streets and public paths are interrupted by the stopping of omnibuses or other carriages?—I do not think that is sufficient; there is some difficulty and a difference of opinion with regard to what constitutes an obstruction; I think we have the opinion of the present Attorney General and Lord Abinger, and they differ in opinion as to what is considered an obstruction; it should be more explicit, because they may claim, to some extent, a right to remain a certain time for the purpose of taking up and putting down.

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514. From your acquaintance with the inconvenience that is sustained in the streets by such obstructions as these, do you not think it would be advisable in the new Act to shape some provision that would meet that inconvenience before adverted to?—I think that some provision ought to be made to embrace such cases, for instance, as their drawling along as they do; that is more or less an obstruction.

515. *Chairman.*] Would it or not be advisable to have a distinct provision to prevent carriages of any description stopping upon a crossing?—I should say that a clause to that effect would be advantageous; I think the 25th clause in the present Act might be advantageously altered or amended to meet other nuisances.

516. There is a power in the Metropolitan Police Act to take bail at the station-houses in the case of petty misdemeanors at present?—Yes, it is in that Bill; it was in our Act as well.

517. Do you see any objection to the extension of this power?—I see no objection to a certain extension, which should be limited and defined, but I would have that power defined.

518. Are you prepared at present to state to the Committee how and in what manner you would limit this power, so that on the one hand the superintendent should have no undue power in his hands, and the public should be amply protected?—This power should, I think, be limited to charges of assault, riotous conduct and drunkenness.

519. Do you think it would be advisable to authorize the inspector on duty at station-houses to require the person making a charge of felony or misdemeanor to enter into his personal recognizance to appear before the magistrate, with power on refusal to discharge the accused on his own recognizances, except where, from a knowledge of his character or of the facts of the case, he has reason to believe the charge is true?—I see no objection to desiring the person making such charge to enter into his personal recognizances to appear the next morning before the magistrate to substantiate it, and if he refused, then the detention ought to be in the discretion of the superintendent, unless he knew him to be a thief, or it had the appearance of truth.

520. Unless he came within the exception that is comprehended in the question; that is, if he had reason to believe the charge was true?—Exactly.

521. Are there not, in point of fact, many charges of felony made from spite, temporary resentment, or upon trivial grounds, which are not intended to be followed up, and would not the requiring such a recognizance from the party operate to prevent vexatious or groundless charges?—In my experience, we have very few; they occasionally occur, these frivolous and unfounded charges, but not often.

522. Are you aware of all charges made against persons at the station-house?—No; but often they mistake felony or theft; they suppose a thing has been stolen from them, when in point of law it is no stealing; but this does not, in my experience, often occur, as far as we are concerned; cases of irritation at the moment are not numerous; they form the exception.

523. Admitting the exception, do you think there would be any disadvantage in giving the inspector on duty the power described, or do you think the chance of abuse is so great as to render it inexpedient?—I would compel the person making the charge to enter into a recognizance to appear the next morning to substantiate it; but how far we should extend the present power, there is the difficulty; because it would be dangerous to allow too much to the discretion of the officer, to say, "This is a circumstance of violence; this is a circumstance of ill blood; this does not amount to a transportable misdemeanor or felony." We ourselves, so near do fraud and felonies run close to each other, have the greatest difficulty in distinguishing between the two.

524. Your difficulty is one of a judicial kind?—Yes; you are asking as to the power you are to give to the inspector or superintendent at the station-house to discharge a person charged with a given offence on his entering into personal recognizances to appear; I should not be inclined to extend that power but a very little way beyond what at present is given, and such extension I would have most positively defined.

525. Can you at all state to the Committee the nature of the offence to which you would limit that power, and how you would define it?—I think it will require consideration to know what class of cases, between what might be termed petty misdemeanors up to those of a graver nature, might be added with safety to the present class denominated petty misdemeanors.

526. Mr.

526. Mr. *Estcourt.*] Is it not the practice at the present moment that the party making the charge at the station-house should sign the charge-paper?—I understand that to be the regulation of the Metropolitan Police.

527. Have you ever found that that precaution is not sufficient to procure a regular prosecution of the charge by the persons making it?—Occasionally instances arise in which the prisoner is brought up, and it is stated to us, that the person who gave the charge is not in attendance.

528. In signing that paper, are the prosecutors required to state their place of residence and description?—I believe so; but this is entirely a regulation of the station-houses, which we have nothing to do with, excepting what we see of the sheets; that is a regulation of the Commissioners, but I believe they do give their name and address. Occasionally, not very often, they state when they bring up their prisoners, that the parties complaining are not forthcoming. If it be a case of felony, or a serious charge, we then take upon ourselves to remand, and to desire to know why they do not come forward, and therefore, perhaps, there would be some advantage that a person should enter into his recognizances to appear.

529. The present precautions not being found altogether sufficient?—Yes.

530. *Chairman.*] With a view to prevent injury to character by malicious and groundless charges, what is your opinion of the expediency of giving magistrates power to award costs on the dismissal of charges, and to allow compensation to some limited extent in certain cases?—These cases occur so seldom, as far as my experience has gone, that I should hardly think it worth while to make any immediate provision; it would be desirable at times, but they seldom occur, and there is so rarely any thing of a vindictive feeling; they generally have a *bonâ fide* feeling that the person has been the person who wronged them; they may mistake a case, supposing it to be a case of larceny, which partakes more of a civil nature; but the feeling is that they have been deprived of their property, and rarely is the charge made for the purpose of doing a person an injury.

531. That being the case, the exercise of the power then, in point of fact, would never scarcely be called for?—Never, hardly.

532. Do you think, abstractedly, the possession of such power on the part of the magistrate objectionable?—This question, and several others involving entirely new matter, which I have not considered, I should wish further time to reflect on them, and give answers more satisfactory to myself.

533. Supposing the qualification by estate to be abolished, what other qualification in lieu of it would you fix on?—I should say a certain standing at the bar.

534. Three years, or five years, or seven years?—I should say at least seven years.

535. How distant is Lambeth-street Office from the Thames Police Office?—About a mile.

536. The cases which occur on the river are exclusively under the jurisdiction of the Thames Police magistrates?—They take them; other offices could take them, but they do fall under the jurisdiction of the Thames Police.

537. There is nothing peculiar in the nature of such cases, or in the law relating to them, which would prevent other magistrates from deciding them if brought before them?—Certainly not; we have all the same powers over such cases.

538. Supposing the Thames Police Office to be removed, and the cases which are brought before the magistrates there were to be brought to the Lambeth-street Office, do you think it would be in the power of the Lambeth-street magistrates to take that additional duty?—Not knowing what the extent of the business is at the Thames Police, I am not prepared to say whether that addition would be practicable by us or not; I have spoken to Mr. Coombe, who sat at the Thames Police first, and is now with us; I asked him the question, and he said he thought not; that there would be such an accumulation that the magistrates at Lambeth-street would not be able to do it; I, not knowing the extent of the business, could form no opinion.

539. Supposing a single magistrate had the power in all cases which now require two, do you think that would facilitate it?—No, I do not think it would; it would not occupy less time, because the same inquiry would be going on before two as before one.

540. The number of magistrates remaining the same, it would?—If you had the magistrates sitting in different offices, then there would be that despatch of business; to have another office, and to let the second magistrate, who now sits idly by the first, be employed in the despatch of business.

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541. Then such an alteration in the law would admit of the suppression of one office in your neighbourhood?—Supposing there to be three magistrates, with power given to one to do that which is now done by two, and another room for a second magistrate to sit for the despatch of business, I should say it is very likely that might answer.

542. Have you much doubt about it?—I cannot say I have much doubt on it.

543. Are you at all acquainted with the nature or extent of the business at Union Hall, Worship-street or Hatton-garden?—Not at all.

544. Suppose it should appear that the cases which occur at Union Hall are nearly a sixth of all that are heard at all the police offices, do you not think, judging from the number of cases decided by the magistrates there, that the magistrates at both Lambeth-street and the Thames Police must have a much less quantity of business to discharge?—That I think is of course.

545. Do you know the population of the district of Union Hall?—I believe I have heard it is between 200,000 or 300,000; ours is rather more than 150,000.

546. Do you think there is any thing in the population of your district as compared with that of Union Hall, to furnish a greater quantity of police business; any thing in the character or description of the population?—No; some parts of the district consist of a very bad neighbourhood—Petticoat-lane and those places.

547. Have you at all turned your attention to the present distribution of the police offices of London, and can you give the Committee any information as to the possibility of either reducing them in number, supposing the district to remain the same, or the extending them more beneficially to the public, supposing the district to be increased?—With regard to our own district, the abolition of our office was the subject of much inquiry when the last Act was introduced, and although there was a considerable quantity of business at all the offices, it was found the position of our office was very advantageous from its being situated on the leading entry into London, and then the branch from the Commercial-road, that that was a very favourable locality for the office.

548. Those reasons for not removing it would scarcely apply to the Thames Police Office?—No.

549. In the event of one being suppressed, the Committee may infer that you would recommend the suppression of the Thames Police Office instead of the Lambeth Police Office?—I believe the reason our office was not suppressed was from the extreme convenience of its locality; as to the abolition of the Thames Police, and whether the business could be, with convenience to the public, transferred to the Lambeth-street Office, within their power of getting through the business, I am not competent to speak; but, certainly, supposing the way in which the Committee put it, namely, that there should be two magistrates sitting for single business, in different rooms, would very much facilitate the despatch of business; it would make a vast difference.

550. Mr. Alderman *Wood.*] Has not your business been much lessened in consequence of the new Poor Law Act?—We do not feel it, in consequence of the regulations under Mr. Walker; we felt but little of it previous to the introduction of the Poor Law; we had but one day on which pauper applicants were admitted; and they seldom came to a number greater than five or six for some two or three years past; therefore, so far as the parish business was concerned, we feel little difference; the principle was carried into effect then by Mr. Walker.

551. Would it require, if you took in the Thames Police district, that your office should be removed rather farther to the east?—It would be convenient then to have it removed somewhat down towards the Thames; perhaps about a quarter of a mile, so as not to lose the convenience of its present position, commanding the inlet into London and the Commercial-road.

552. How far are you from Worship-street?—About a mile and a quarter, or a mile and a half.

553. *Chairman.*] You still continue of the same opinion expressed by you in the former evidence, that the giving one magistrate, in all cases, the power which occasionally now requires two, is unobjectionable?—I think both in principle and practice it is perfectly true.

554. Supposing one magistrate sat alternate days at your office, and sat from ten to five, and the Thames Police Office to be altogether removed, do you think that the business could not be discharged under those circumstances?—In order to give a satisfactory answer, one ought to know exactly the quantity of business now done by the Thames Police Office; if the business was a very small quantity, I

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should say it might be; if it was a large quantity of business, it would require an additional magistrate sitting in another room for the despatch of business, otherwise the public would be inconvenienced by being detained.

555. Suppose the number of cases at the two offices did not exceed the number heard daily before the Union Hall or Hatton-garden magistrates, what then would be your answer to the question?—Yes; provided the cases arising on the Thames were as easily despatched as other cases; but I am told that there are cases arising on the Thames, which, though not very numerous, still involve serious points, and require longer time for discussion and decision than the cases at the other offices.

556. Are cases which occur on the Thames, from any information you have, such as involve serious points of law for the magistrate to decide on?—I am told so.

557. Can you assign any ground for the apprehension?—I have heard Mr. Coombe make that remark, who has sat there.

558. With reference to the former question as to the removal of the Thames Police Office, the cases which then occurred on the river would be divided between the Union Hall Office and Lambeth-street Office, and perhaps some might even go to the Town Hall, which is close on the banks of the river, in that case the addition of business to Lambeth-street Office would not be so great?—Surely not; I was only contemplating the entire transfer.

559. Let it assumed that the alteration alluded to would throw a considerable addition of business on the police magistrates?—Yes.

560. Suppose that, by the suppression of a magistrate, their salaries could be augmented each to the amount of the half of that of the magistrate suppressed, do you think among the magistrates there would be any objection to taking this increase of duty?—From conversations I have had with several of the magistrates, I should say decidedly not.

561. Would not such an augmentation of salary, being accomplished without any additional expense to the public, together with the qualification you have described, ensure in the long run a superior class of candidates for the office of police magistrate?—I think it would.

562. Assuming such a class of men to become candidates for that office, might there not be made a very considerable improvement in the mode of managing the business in these offices; might they not be put more on the footing of courts with reference to their practice, and built more after the construction of courts with reference to their internal arrangement?—Yes; I think great improvement might be made in every respect with regard to the administration of justice in our offices, which are most inconvenient for the despatch of business, and highly so to the public.

563. Do you think that the administration of justice would be at all improved, were magistrates sitting singly to sit with the usual distinctions of the bar, as the Commissioners of Bankrupts now sit, in lieu of the custom which formerly prevailed?—I should say it would give an air of respectability to the proceedings which is very much wanted at present; there is a want of form and appearance of judicial order about our proceedings at present, and where large powers are placed in the hands of individuals, the administration of those powers ought to be surrounded by all the attributes of judicial station.

564. Considering how much these offices are frequented by the working classes, and by persons of all descriptions, is it not of considerable importance that the business should be conducted in an orderly manner, and that the suitors should have every required convenience for that numerous class of cases which require despatch, and at the same time considerable care in the administration of justice?—Assuredly; at present the want of such accommodation is very much felt. As to our office, a plan has already been submitted to the Home Office for its improvement; the applicants there are obliged to crowd together; the thief and the honest man, the prostitute and the modest woman, are hustled together in one room, and if the numbers should accumulate, they may go into the street or seek refuge in the public-houses. There is no accommodation for the public, and I should not suppose that any person who once came to our office would put his foot in it a second time, and would rather put up with any injury than submit to so much inconvenience. Such is the total want of every thing in the shape of convenience, that people are driven out in the rain; there they may stand, or go into the public-houses.

565. Supposing this alteration to take place in the law and in the mode and manner of conducting business at these offices, what is your opinion as to

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the expediency of giving police magistrates the power of deciding summarily in all cases of simple larceny, without respect to value of property or the age of the offender?—I should say it would be a power given to the magistrate with great profit to the public; at present this power is exercised in a variety of cases by Act of Parliament; in other cases we bend the law to meet the numerous applications of individuals praying us to treat cases summarily; in point of principle, there could be no objection whatever to extend that power which is now so continually exercised in a variety of instances where the law does not positively empower us to decide summarily; we often take it, either under the Pawnbrokers' Act or the Police Act; a person having property in his possession not giving us a satisfactory account of how he came by it, or that he was at a place for the express purpose of committing a felony, using the matter taken as evidence of the intention of the person to be there; it always struck me as somewhat absurd that power should be given to the justice to determine the intention of the party, where he is going to commit a felony; but the moment that is made clear as noon-day, as that the handkerchief is out of the pocket, that should be submitted to petty juries and grand juries; before he did the act you had the power of saying, "You had such an intention, now go to gaol for three months."

566. In fact, as the law now is, you exercise a summary power of committal where the party is brought before you on suspicion, and when the case is clearly proved you send the case for further investigation by the jury?—Yes; or repeatedly in cases of confession.

567. Assuming that there may be some objections to this extension of jurisdiction, under what restrictions would you think it right to place the exercise of such power?—To all cases of simple larceny, unattended with violence to the person or any aggravating circumstance, where it was the simple taking, whether it was from the person or in a house.

568. Mr. Alderman *Wood.*] Which is in fact simple larceny?—Stealing in dwelling-houses and from persons is visited with a heavier punishment.

569. *Chairman.*] Would it not be expedient, in the event of such an extension of the powers of the police magistrates, that they should have the power to refer cases of importance to the sessions?—Certainly.

570. In all cases where the facts were complicated or difficult, or where the point of law was not clear or distinct, you would then make it incumbent on the police magistrate to refer it to the court above?—Surely; such as cases of constructive larceny.

571. Are there not many clear cases of larceny, which, from peculiar circumstances, are not sent to trial; such as charges by parents against children, or charges which, from the compassionate feeling of prosecutors, or the impossibility of securing the attendance of a material witness at the trial, that the magistrate feels it most expedient to discharge, because he cannot convert it into a case of summary jurisdiction?—Some cases arise of that sort, but we contrive to bend the laws just now mentioned out of their line to bring these cases within them, as occurred the other day with a parent, where the child had stolen some property; I treated it under the Pawnbrokers' Act, as having pawned the property.

572. In point of fact, you do exercise a very extensive summary jurisdiction, even in cases which the law scarcely sanctions, from a belief that it is better to decide the case at once for the interest of all parties, both the accuser and the accused, in lieu of sending it to the sessions to be tried, involving, as it does frequently, long periods of imprisonment to the party accused?—We do exercise such power perpetually, and we are assailed continually to exercise it still more; and an experienced officer said the other day that there are very few persons who have gone through a criminal proceeding that would ever complain again. There are 19 out of 20 who have done that for the first time, not knowing what they have to go through, passing through the examination and re-examination at the police office, thence before the clerk of the Central Criminal Court taking the notes for the indictment, thence to the grand jury, and thence before the petty jury. It was the remark of Lee, an officer, that he believed that 19 out of 20 of such persons having encountered such an ordeal would not be found again to undergo it; all persons who do it are strangers; 19 out of 20 are strangers to what they have to go through.

573. Mr. *Estcourt.*] Would you give any election to the prisoner or prosecutor, or to both, to have the case adjourned to the next gaol delivery instead of being summarily decided?—No, I would not; I would leave it to the discretion of the magistrate whether he thought it a case fitting for the upper tribunal or not.

574. *Chairman.*]

574. *Chairman.*] The Committee would more especially call your attention to the fact that this extension of the summary jurisdiction of magistrates, involving as it does dispensing with the trial by jury, in many cases may be considered objectionable on that account; what is your opinion of the value of the trial by jury in reference to the investigation of facts in cases of simple larceny, such as those to which it is proposed to extend the summary jurisdiction of magistrates?—I should say that a magistrate experienced in such matters is a much more competent tribunal to decide any given fact than a jury; and with regard to the grand jury, as it is at present constituted, it is rather an impediment than an advancement of the ends of justice; I am now speaking of the police magistrates. *J. Hardwick*, Esq. 8 May 1837.

575. Do you think stipendiary magistrates, generally, sitting in a public court may be safely entrusted with this power?—Certainly; we find the grand jury a positive obstruction; the case has been entirely gone into before the police magistrate, the evidence heard on both sides, and it has been decided to be a fit case to be heard before the upper tribunal; then the grand jury hear but one side, and there is the opportunity often given of smuggling witnesses out of the way, and occasionally the case falls to the ground in that stage of the proceedings.

576. Then you think any apprehension of undue interference with the liberty of the subject, or any apprehension on the ground of a hasty and unjust conviction in the cases spoken of and under the jurisdiction described, would not be well founded?—I should say it would not be well founded, recognizing the principle which has been acted on so long of giving these powers to all magistrates to a certain point; one could see no reason why the police magistrates, who are men taken from the bar, and with longer experience, might not be fairly entrusted with larger powers.

577. Would not the experiment be tried to great advantage in the metropolis, under the conditions which have been stated?—Yes, certainly.

578. And if such an extension of summary jurisdiction has *primâ facie* a case to entitle it to consideration, that the Police Act offers an opportunity of trying that experiment under the eye of public observation and in the hands of qualified magistrates?—A very favourable opportunity.

579. Would not the saving of expense be considerable by the substitution of a summary jurisdiction in lieu of remitting the case to the sessions in cases of simple larceny?—The saving of expense in many cases would be very great; where we look to the trifling offences committed at a distant part of the county, the expense to which witnesses are exposed, and which are now allowed, the amount must be very great; and a more summary proceeding would be the mode of saving this waste of money and of time.

580. Assuming a strong opinion to be entertained as to the necessity of upholding the trial by jury, can you suggest any means by which a jury of twelve, or of a smaller number, might be empannelled from time to time in the courts of the police magistrates?—Yes, surely.

581. What would be your opinion of such an arrangement, supposing it to be objectionable to alter the present mode of trying such offenders by a jury?—Supposing we have now arrived at the ultimate point of power to be given to magistrates, and that the principle of trial by jury is not further to be departed from, I should say that I see no great difficulty in summoning, once or twice a week, a jury; I would not have a jury of twelve, a jury of five would be enough, which might determine such cases.

582. Between the time of accusation and trial, in the way you propose, where would you detain the offenders?—They would go, as at present, to the gaols.

583. Do you not think it incumbent on the Government to take the earliest possible means to alter the mode of imprisonment in order to prevent injury to the morals of parties accused from the simple act of imprisonment?—No more time should be taken for the inquiry than is absolutely necessary, so as to save, before trial, the imprisonment of the individual; but in London, for one person who may be contaminated, you get fifty who are known thieves and bad characters, and to whom no greater contamination is to be apprehended; there are but few of that class that the being in prison a short time previous to trial would do much harm.

584. Have not the parties to whom you allude generally been in prison before?—Generally; but we have cases of entire new delinquents, and perhaps there it would be desirable to keep them apart from mixing with more hardened ones as much as possible.

585. In your opinion, it would be desirable to prevent new delinquents from being contaminated?—Yes.

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586. And, of course, it would be your opinion that old delinquents need not be made worse by associating with bad characters in gaol?—That would be a matter of prison discipline.

587. Would not the objection which arises out of the present system of prison discipline be to a certain extent removed, provided there were lock-up houses under the direction of the magistrates attached to their offices, in which parties pending the trial proposed might be kept separate?—Yes, in a variety of cases that might be done, certainly, with advantage for young delinquents and females who have committed what is supposed to be their first offence.

588. Have you ever been a visiting magistrate in Middlesex or Surrey?—No.

589. Are you acquainted with the City gaols?—No.

590. Are you at all acquainted with the Inspector's reports on the state of Newgate, for instance?—I have read portions of them.

591. Can you suppose an establishment to be more calculated to increase crime than that of Newgate, as described by the Inspector's reports?—Certainly, it would not add very much to the morals of the persons who are so imprisoned there.

592. Mr. Alderman *Wood.*] Allow me to ask whether, in case of this summary jurisdiction put in possession of all the police magistrates, should it not be secured to the prisoner that he should not be charged as a felon, that it should assume some other character, call it a misdemeanor, which does not forfeit goods, or any other character, so that there is no record of felony by which their goods are forfeited?—I should say, certainly, that there should be no record of felony, but it should be treated as a simple stealing or taking; that cabalistic word felony only tends to mystify and confuse.

593. I wish to know whether, on a summary conviction, the magistrate should be authorized to grant a certificate of his conviction, for the purpose of being offered as evidence on an indictment for a subsequent felony?—The magistrate should be required to transmit the certificate, and such certificate should be admitted in evidence.

594. Then you think the magistrate should send him positively to a jury in the second case?—Yes.

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MEMBERS PRESENT:

Mr. Clay.	Mr. Fox Maule.
Mr. Clive.	Mr. P. Scrope.
Mr. Estcourt.	Mr. Alderman Wood.

MR. HAWES, IN THE CHAIR.

John Hardwick, Esq., again called in; and further Examined.

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595. *Chairman.*] YOU stated in your last examination that you wished a little further time to reflect upon some of the subjects which the Committee brought under your consideration; the Committee would renew the examination to-day, by asking you, in the first place, whether or not you would think it expedient that the constables of the police office should hereafter be incorporated with the Metropolitan Police force?—I should think, looking now to the principle of the separation of the judicial from the executive, that it would be advisable that the whole of the executive force should be under one head, with this proviso, that the officers attached to the different police courts should be exclusively under the control of the magistrates of the police.

596. The police magistrate formerly was responsible, not only for the discharge of his duties as a police magistrate, that is to say, in the adjudication of the cases brought before him, but he was in some degree called upon, was he not, to assist in the prevention and detection of crime?—Certainly; the officers would look to the magistrate for his direction as to the best means of detection and of prevention.

597. They formerly felt it to be a part of their duty not only to prevent but to detect crime, as far as they could, and they frequently gave their officers instructions how to proceed for that purpose, did they not?—Always so.

598. Latterly, has not the whole of that duty been performed by the Metropolitan Police?—It has.

599. Then

599. Then, in point of fact, might not the office constables be attached entirely to the police force, and the police court have no permanent constables attached to it, but with full power on the part of the magistrate at any time to command the services and direct the proceedings of any constable of the police force?—I should say that it would, perhaps, be better that a certain number should be nominated and fixed at the different offices to execute the directions of the magistrates in a variety of cases, and likewise their warrants, in cases of assault, and warrants also of search occasionally.

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600. Do you receive any applications for warrants upon charges of felony, or to search for stolen property?—Upon charges of felony, scarcely ever; and we generally refused warrants in those cases, because, in point of fact, there is no necessity for a warrant to apprehend any case of felony; the constable can do it on his own motion. With reference to search-warrants, we hesitate, because the law is not sufficiently defined; and I take it that there are few search-warrants that are issued, that if brought into the Court of King's Bench would bear an inquiry.

601. When such warrants are granted, to whom do you usually entrust the execution of them?—To our own constables; they are known to us, and, from knowing them, we have more confidence in their experience that the warrant will be properly executed.

602. When an office constable has a warrant for felony or to search for stolen property, does he not frequently apply for assistance to the constables of the Metropolitan Police who are distributed all over the town, and who possess the most information?—That I cannot say; as far as my own experience goes a warrant is never granted in a case of felony, and very rarely for the search of goods; but I conceive that the officer would go directly to the house and execute the warrant himself, or taking with him some other constable of our establishment, and no information would be sought, I conceive, from the Metropolitan Police Office.

603. Do not you think the superintendent of the district and the constables constantly on the beat must have the most accurate information with respect to doubtful characters in their neighbourhood?—Certainly, as the system is now working, because the officers now attached to our establishment, previously to the establishment of the Metropolitan Police, felt it to be their business to make themselves acquainted with thieves and suspicious characters, and the haunts of thieves and the houses of receivers, but now, since the establishment of the new police, they think themselves exonerated from such service, and, in fact, do not give themselves any pains, as far as I have been able to observe, to notice thieves, or the haunts of thieves, or the houses of receivers; they content themselves simply with the execution of the orders of the magistrates and summonses in assault, &c.

604. Then it is your opinion that the best information of the state of crime, and the best information as to the haunts and abodes of evil-disposed persons, must, upon the present system, mainly be lodged within the Metropolitan Police force?—Certainly, if they attend to their business.

605. Then do no not you think that there would be greater promptitude and certainty in the apprehension of felons or offenders generally if those warrants were always entrusted to the Metropolitan Police constables?—For the apprehension of felons, I should say, as I said before, there is no occasion for any warrant; the officers can upon suspicion, or a charge of felony, (the law empowers them,) arrest a person for felony; with regard to the warrants to search for stolen goods, it is absolutely necessary that the officer should have the warrant of a magistrate to authorize him to enter.

606. The object of the question was this, to ascertain from you, who admitted that the Metropolitan Police force was now the best depositary for criminal information, whether or not it would be advisable at once for the magistrates to place whatever warrants they may think right to issue, in their hands, and generally, if they wish to apprehend offenders, to give their instructions to members of that force in the first instance?—With regard to the apprehension of felons there is no difficulty; the difficulty is with regard to granting warrants to the officers of this force, who are not under the control of the magistrates, and who are strangers to them, because, let it be observed, that the magistrate whose signature is to that warrant, is responsible in law; and if that warrant be incorrect in any way, or not properly executed, an action is brought against the magistrate; on that account it is that the magistrate would prefer placing such an instrument in the hands of an experienced constable, known to him, in preference to placing it in the hands of a man to whom he is a total stranger, and who may, before the coming on of any action,

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disappear altogether; it is on that account that there would be an abstinence on the part of magistrates to grant warrants to strangers.

607. But practically, would not the magistrates soon ascertain the most intelligent constables belonging to the force in his district, and entrust to them both his warrants and his general instructions?—Yes, he might do so; or supposing, as I said before, that certain officers of the Metropolitan Police force might be attached permanently to our office, then the principle would apply, that the magistrate would give the warrant to those immediately about him, who were known and attached to him, and upon whose experience he could rely; but I should take the liberty of suggesting, with reference to those search-warrants, that the power should be lodged at once either in the superintendent or inspectors, to search themselves the known haunts of reputed thieves, or the houses of receivers; because the passing of stolen goods is so completely organized and so rapid, that even in the space of time consumed in waiting for the sitting of the magistrate, in order to apply for a warrant, the goods may disappear altogether. I would give to certain officers a power similar to the powers given to officers of the customs, under the term writs of assistance, empowering those particular officers to enter places where contraband goods are suspected to be lodged; and in every way it would take from the magistrate a great deal of responsibility which is now unfairly thrown upon him, and it would greatly facilitate the detection of offences.

608. Mr. *Fox Maule.*] In granting that power which you name, do you think that there would be no risk of the officers misusing it?—I would tie it up as strictly as I could; first, it should only be given to particular officers, singled out, from their respectability and experience, superintendents or inspectors, and then to those houses to which reputed thieves resort, or the houses or rooms of reputed receivers, so that you should always, supposing a case of an action, throw it upon these men to show that such and such a house or room was the haunt or the place of abode of a reputed thief or receiver, and in the event of their not being able to prove that, they must take the consequences.

609. *Chairman.*] May the Committee conclude that it is your opinion, from what you have stated, that the having two sets of officers with concurrent power in the apprehension of felons and other offenders, but under distinct control and acting independently of each other, is unfavourable to the prevention and detection of crime?—I could not say that it was unfavourable, but that the one body, now the intervening body of the executive, namely, the officers of the old establishment, are fast passing away; they do nothing, in point of fact, except executing warrants of assaults and summonses; they do not interfere with the Metropolitan Police force, so that it is not unfavourable, for they never seem to give themselves any concern as to who are thieves and who are not; they do not facilitate, but they do not interrupt the action of the other officers; they are, in point of fact, becoming useless.

610. Then, in point of fact, the Metropolitan Police constables do now nearly absorb the whole of the duty formerly discharged by the office constables?—As far as the prevention and detection of crime, as relates to our office, entirely.

611. And all the emoluments of the office arising from the executing of warrants of assault, and summonses, are reserved for such of the office constables as now remain attached to your offices?—Exactly; they have certain fees upon the execution of summonses and warrants.

612. Supposing the gradual extinction of those office constables which you have hinted at, do not you think that source of emolument might be made very available for active meritorious officers belonging to the Metropolitan Police, and who might be attached to your office?—Certainly; I would make the stations at our offices places of reward for good officers.

613. And the loss of the emolument and the office, by reporting an officer negligent or guilty of improper conduct, would be a sufficient stimulus, perhaps, in your opinion, to the active and faithful discharge of his duty towards the magistrate who should select him for that situation of confidence?—I should think so; I would take the liberty even of suggesting that the officer should have better pay; it should be looked to as a station of reward for diligent service.

614. Mr. Alderman *Wood.*] How many office constables are there to your office, and what is the weekly emolument of those constables?—The establishment has six constables; I think the chief constable receives three guineas a week, and the others receive, I think, 25 *s.* a week, besides what they get for serving summonses and warrants.

615. How

615. How is that distributed, with reference to the emoluments of the office?—The summonses are generally executed by what is termed the messenger.

616. Does the messenger take the whole profit of that to himself?—Yes, he does. Then, with regard to warrants of assault, they take it in turns; for instance, whatever warrants are granted to-day, such particular officers have to execute.

617. Is the messenger a sworn constable?—He is not, with us.

618. Mr. *Fox Maule.*] What other emoluments have the constables appointed to your office, rather what is the amount of their other emoluments, in addition to the fixed payment of 25*s.* a week?—They have so much for the serving of those warrants of assault, and the amount of the emoluments upon those depends partly upon the number of persons included in the warrant, and partly upon the distance to which they have to go to execute them.

619. By whom are those fees paid?—They are paid in the first place by the person who takes out the warrant; and then, upon the decision, if it is a frivolous case, the magistrate may say to the plaintiff, you must pay your own expenses; if he decides in favour of the plaintiff, he says, the defendant must pay; or sometimes there is so much fault on both sides, that he says you must divide the expenses between you.

620. Do not you think that great advantage might accrue to the public if all fees of that nature were absolutely abolished?—I fear not; it would offer too much inducement to parties who, perhaps in a moment of irritation, come and take out a warrant against their neighbour; we find that that works so strongly, that, except upon particular occasions, we never allow a warrant to issue without the party paying for it. In three cases out of four or five of warrants granted gratis, you never hear any thing more of it; they settle it among themselves; and no payment being ever required upon the warrant, it would be only an inducement for persons in the heat of blood or otherwise to come directly for a warrant, if they knew that they could receive it for nothing, and the payment of a small expense upon it acts as a check upon that which I should think it very undesirable to get rid of.

621. Supposing a power was given to the magistrates of awarding costs when the case might be pronounced by them frivolous and vexatious, would not that supersede the necessity of a general imposition of fees such as now exist?—The case which I suppose is where the parties do not appear to the warrant; I must explain that point; you would suppose that when a warrant is granted the officer would take the party into custody; by the law, perhaps he ought to do so, but that would work very hard upon the lower classes of the people, taking them from their work; for instance, two persons quarrel, one comes and takes out a warrant, if the officer upon receiving that warrant were directly to go, perhaps it is at night, and to take up that man, he might lie in custody for some hours before the case would come on, and the practice has been invariably at all the offices for the officer who has the warrant to go to the house of the parties, as it were to summon them, to show them the warrant, to give them notice that they are to appear next morning at such a time to answer the charge, and we generally find that successful; if they are contumacious and refuse, the officer has an order to arrest them when he can, and take them to the station-house; the officer desires this person to come on the following day, or on such a day, to answer the charge; in the mean while the parties make it up among themselves, and neither the complainant nor the defendant appears; there it drops, and the officer's time has been taken up and trouble been given to him for nothing at all.

622. But why is the officer paid a certain weekly salary, if his time is not to be at the command of the public; why should he be paid an additional fee for the mere discharge of his duties as an officer?—Because I believe that it was not considered that that pay was at all sufficient to support the officer in the way that he ought to be supported.

623. Do you think that it would be an improvement to put the officer upon a respectable footing as to pay, and to relieve the public at once, as far as you could, of paying those fees upon warrants, and giving the magistrate the power of determining costs, should the prosecution be, in their opinion, frivolous or vexatious?—There would be no objection to that; but, in point of fact, in nine cases out of ten, where it has been a frivolous charge, we do make the plaintiff pay the expenses of the warrant; but in the state of things to which the question refers, the plaintiff would be put to no expense, and therefore it would be necessary that the magistrate should have the power of making the plaintiff pay something, supposing it to be a frivolous case.

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624. Might not the sums which are accumulated from those payments with advantage to the general service, be put into a fund from which the services of meritorious officers might be rewarded, or a superannuation fund for the general police of the metropolis?—Yes, that might be accumulated and distributed in any way that was thought desirable, either as a reward to officers, or in any other way that might be thought most expedient.

625. Mr. Alderman *Wood.*] At present a portion of the sum paid by the person applying for a summons goes for the expense of the office, does it not?—Yes, to the Government.

626. Do you grant in general warrants for assaults, or do you grant summonses?—Invariably warrants for assaults, and they are acted upon by the officer in the nature of summonses.

627. Mr. *Estcourt.*] Why do you prefer granting a warrant in the first instance?—That is the law, that for an assault a warrant or an immediate arrest shall be issued, but an immediate arrest would act so hashly and severely upon individuals, that though it is a warrant of arrest, it is acted upon as a summons by the officers; they do not incarcerate the party immediately, but say, you are to come to-morrow to the office; and if he were to refuse, then the law must take its course.

628. Mr. Alderman *Wood.*] Supposing the plaintiff having applied for a warrant or summons, which ever it may be, having taken that out without any charge whatever, you think that a large portion of those parties would never appear at all, having settled the matter between them?—We find it very often so, where warrants are granted gratis that they do not appear.

629. The consequence of that is, that the expense is thrown upon the office; the officer is employed to go some considerable distance, through the caprice of the plaintiff, and he would not have to suffer any thing whatever, the magistrate not being able to get at him to charge him with the costs which have been alluded to before?—Exactly; we find that often to be the case.

630. Mr. *Fox Maule.*] Might you not exact from every person requiring a warrant a certain small deposit, which should be redeemed by him on coming up with the person against whom the warrant was taken, or on his re-appearance?—That is what we do; they do pay for the warrant, in the first instance.

631. Might not that sum be returned to them upon their re-appearing after the warrant was granted?—Yes, it might.

632. Mr. Alderman *Wood.*] The practice is very constant, that the person who has applied for that warrant, if he is wrong, in the opinion of the magistrates, is fixed with that expense, is it not?—Yes.

633. On the other hand, if the defendant is wrong, the defendant pays the expense?—Yes.

634. Will you be good enough to inform the Committee upon what ground so large a payment as three guineas a week is made to the chief constable of your office?—Some time ago, when our establishment was greater, we had seven or eight officers at one time; it was thought expedient to have a chief constable there, to take account of the time of the other officers. Without a chief constable there was no one to whom to give an account; any one of the officers might be absent from the office the whole day, and no one was to inquire what he had been doing; they might say, "I have been after such and such a thief;" therefore it was thought expedient to have a chief constable; but we found that it was of very little use; there was very little control.

635. *Chairman.*] Are the magistrates ever put to inconvenience by the absence of the office-constable, when his evidence is wanted to prove service of processes or other matters in the case?—Occasions may occur with such a man as Lee, who is very much employed in complicated cases of felonies; he is away at times, and he might a day or two before have executed a warrant or summons, and not be present when that required to be proved; but that rarely occurs, particularly as the new police attend to all matters of felonies.

636. You make a daily report of cases of felonies, do you not?—We do.

637. What time, on the average, does that occupy each day?—Not many minutes; I suppose ten minutes.

638. There is also a monthly report to the Home Office, is there not?—There is.

639. Is that a work of any labour?—Yes, that, of course, would require some time to compile.

640. The

640. The printing of those reports occasions considerable expense, does it not?—The returns to the Home Department are not printed; I believe they are all in manuscript. The Committee inquired the other day whether in my opinion any improvement could be made on section 25 of the Police Act, with regard to carriages. There is an omission in that with regard to persons riding on horseback; I would propose that the latter part should stand thus, "Or if the driver of any carriage or vehicle whatsoever, or any person riding, shall by negligence and wanton or furious driving or riding, or any other misconduct, endanger the safety of, or cause any hurt to, any person or damage to any property, being upon any street or highway," &c., using the words, "endanger the safety of," as taken from the Carriage Coach Act. Then there was another point with regard to the interruption of the free passage. There are two provisions, which would appear at first not to be necessary, but they each have their meaning; the one where the words are, "interrupting the free passage," would refer to the case of a single vehicle stopping upon a crossing, or putting down upon a crossing, which would be a clear interruption of the free passage. And the second provision is, "or shall obstruct the street, and shall be required to move on." Now that also would be an interruption of the free passage; but that, I take it, was intended to refer to a collection of coaches, and it would make it more clear if it ran thus, "or shall, together with other such coaches, obstruct the street."

641. Will you look at section 31 of the Act, which relates to the apprehension of suspected persons, and state whether magistrates are not frequently in the habit of convicting under that section, when in fact the felony has been committed?—Yes, very often.

642. Do not they also convict under the 38th and 39th sections of the Act?—Yes, where parties are unlawfully possessing property.

643. Do not they also convict summarily under the section of the Pawnbroker's Act, against illegally pawning?—Very often.

644. Is not the object of such a summary mode of dealing with cases of felony to avoid the expense and trouble of sending to trial cases where the evidence is clear, but the amount is trifling?—Yes, to save persons the trouble of going through all the various steps which would be necessary.

645. And also in cases where the parties are unwilling to prosecute?—Yes, where they are unwilling to prosecute, unless it can be taken summarily.

646. Is there not a great expense and trouble saved by this summary mode of dealing with cases of felony?—Both great expense and trouble are saved.

647. Do you think that this summary mode of proceeding is productive of injustice to the accused, or of injury to the public, at any time?—I should say not; on the contrary, many offences would go altogether unpunished were it not for a summary power being exercised.

648. Do you find prosecutors desirous to avail themselves of this mode of disposing of those cases of petty larceny?—I should say in 19 cases out of 20.

649. Do you find prisoners or their friends or legal advisers readily accede to this mode of proceeding?—The legal advisers and friends often request that the case may be so dealt with.

650. Do you think that there is any unfavourable feeling to the exercise of this jurisdiction by the magistrate on the part of the public?—None whatever, but the contrary.

651. Do you happen to know whether complaints have been made by grand juries, that petty cases of larceny have been sent to trial instead of being summarily dealt with?—I have seen in the papers that such complaints have been made.

652. Seeing then that the practice is so common and so generally approved of, do you see any objection, or would you not rather recommend, that it be legally authorized, and that police magistrates should have the power of deciding summarily in cases of simple larceny?—I am quite of that opinion.

653. Would you recommend any restriction as to the age of offenders, or as to the value of the property stolen, or would you extend that power to all cases of simple larceny, without respect to age or value?—I would extend it to all cases of simple larceny, without regard to age or the value of the property taken.

654. Guarding against such a conviction incurring the forfeiture of goods?—Guarding against that, taking some other word to characterize the offence than felony.

655. Would you, however, allow it to operate as a first conviction so as to be given in evidence upon the trial of an indictment upon a subsequent felony, or

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would you not?—I would let the certificate of the conviction before a magistrate be admitted as evidence upon a trial for a subsequent felony.

656. What punishment should the magistrate, in your opinion, be authorized to inflict; would you include solitary confinement, and also whipping, in the case very young offenders?—In the case of very young offenders, under 15 years of age, I would give the power of ordering whipping, with slight imprisonment, or none at all. With regard to the length of the imprisonment, with or without solitary confinement, confining it to cases entirely of simple larceny, and with good prison discipline, I should think that 12 months should be the utmost.

657. That is to say, with power to punish by imprisonment for a period not exceeding 12 months?—Not exceeding 12 months, because we should still have the power suggested of sending cases to the courts above, where a much larger measure of punishment seemed necessary to the magistrate.

658. In the case of juvenile offenders, convicted under the Police or Vagrant Act for misdemeanors, would it not be expedient that there should be some power at once, if thought right, to whip and discharge them, instead of sending them to the house of correction?—Certainly.

659. At present that power is only possessed by the quarter sessions?—Exactly.

660. What is your opinion as to the propriety of making restitution for stolen property, upon summary conviction?—In the case of pawnbrokers or marine store dealers, where there was evidence that the persons taking the property in ought to have suspected that the property was stolen or unlawfully come by, I think that the magistrate should have power to compel a restitution, and that whether conviction took place or not, and in other cases to compel the offending party to make restitution.

661. Mr. Alderman *Wood.*] Do you commonly, when the guilt is not proved clearly enough for you to commit, order the goods to be restored either by the pawnbroker, marine store dealer, or any other person?—We do take upon ourselves such a power.

662. Supposing that they cannot show that they came into possession legally of them, do you order the goods to be restored?—We often do so.

663. *Chairman.*] Have you any other observation to make respecting the power of the magistrates to convict summarily in the case of simple larceny?—No.

664. Do you think it advisable or not, to have the assistance of a jury in such cases?—I should say not.

665. Mr. Alderman *Wood.*] Do think that one single magistrate should have the power of imprisoning for 12 months, in the case of a summary conviction?—I fix that as the ultimatum.

666. At present in none of the Acts is the power of imprisoning for more than six months given?—That is so; but looking to the persons who are to hold those situations being trained to the law, I would be inclined to extend that portion of the power beyond what is generally given to magistrates at large, upon their being understood to be judicially educated.

667. Mr. *Estcourt.*] Have you had any informations laid before you for the exposure of obscene prints in shop windows?—Not in our district.

668. Mr. *Scrope.*] Do many cases come before you of mendicity; are you in the habit of committing under the Vagrant Act persons who beg in the streets?—Occasionally, not very often.

669. Do you keep your district tolerably clear of mendicants?—Yes, we have very few cases; we are very much clearer of those persons than at the west end of the town.

670. For instance, persons who beg in the streets and wander up and down upon the pretence of selling matches, or who hawk songs about?—We have very few cases brought before us.

671. Do you mean that few cases are brought before you, or that few exist in the streets of your district?—I pass through a good deal of the district, and I see very few mendicants about.

672. Is it the duty of the police officers to clear the streets of such persons?—Certainly.

673. Do you think that they perform that duty efficiently in your district?—I have no reason to think the contrary.

674. In what way is it made imperative upon them?—They ought to know that it is against the law for persons to go about the streets begging, and they bring

bring up persons occasionally whom they find so doing, and we dispose of them as we think fit.

675. Are you speaking of the Metropolitan Police?—Yes.

676. Are they corrected by the magistracy or the Commissioners if they neglect their duty in that respect, and allow street beggars to infest the metropolis? —We do not think it our duty to correct them, and I do not know the feeling of the Commissioners upon the point; but if I had an intimation to throw out to them, I should say it is their duty to take up every person guilty of mendicity.

677. Are you not aware that many distressed persons go about hawking their songs?—I should say in many districts the officers do not do their duty in taking up those cases.

678. That is not the case in your district?—No, it is not; in passing to and fro I see very few cases.

679. Then if the streets are not properly cleared of those objects you think that it is owing to some laxity on the part of the police officers?—Generally.

680. With whom would it rest to compel the police officers to do their duty in that respect?—The Commissioners.

681. Do you think that the Commissioners have ample power for that purpose? —Perfectly so; it is their duty to do that, and if the streets were infested with those persons, and the officer did not do that, the officer on that beat ought to be called to account why those vagrants were about.

682. What would it be the duty of the police officer to do with those persons? —To take them up before a magistrate.

683. There is no deficiency of power in the magistrates to act in those cases? — None; we have the power to send such persons to hard labour for one month.

684. And you think that there would be no indisposition in the magistrate to act upon that?—As far as we are concerned we invariably inflict the punishment, because we find in 99 out of 100 cases those persons are impostors.

685. And your opinion is, that as institutions upon so large and liberal a scale are appointed in the metropolis, in the shape of poorhouses and hospitals, and other institutions for the relief of destitution, mendicity ought not to be permitted for a moment to exist?—Not for a moment.

686. And it is the duty of the Commissioners to give such orders to the officers as would secure the streets from being pestered by persons of that description?— Certainly, there ought not to be a case found in the metropolis.

687. *Chairman.*] By the law relating to master and servant, the disputes between domestic servants and their masters are not within the jurisdiction of the magistrates, are they?—They are not.

688. What would be your opinion as to giving the magistrates jurisdiction in such cases?—By analogy to their deciding cases between workmen and their employers, I see no objection to it, though I think the Court of Requests just as fit a place for those cases.

689. You have been asked a question relating to the 31st section of the Act empowering constables to apprehend any suspected person or reputed thief, and convey him before a justice; have you any further remarks to make upon that section? —I would propose to substitute for the word "frequent," in the first line, the words "resort to."

690. Would you extend the power of the magistrates, under the Acts relating to brokers' charges, so as to apply to all cases of irregularity, extortion or oppression, in regard to petty distresses, where the amount does not exceed a certain sum? —That is a power that is very much wanted; I am not prepared at this moment to say how the enactment should be framed; but it is a power that is very much wanted; there is great oppression as it now stands.

691. Could you at your leisure favour the Committee with an accurate answer to that question, with a view to framing an enactment?—I will.

692. With regard to the detention of lodgings or houses at a weekly or monthly rent, are there not numerous complaints by landlords of this nuisance, and is there any ready or reasonable mode of redress at present?—There is much complaint on the part of landlords not being able to get rid of tenants, and some summary mode would be desirable.

693. Do not such disputes lead to constant riots and disturbances and assaults? —Very often.

694. With regard to the detention of property contrary to good faith, or without any pretext for it after tender of expenses, might not many cases of hardship be

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avoided were some power granted to the magistrate to adjudicate in such cases?—Certainly.

695. The only remedy at present being an action at law, which, for a petty amount, cannot be resorted to?—Exactly.

696. Do you think that the magistrate might be authorized to summon the party detaining the property, and inquire into the question of ownership, and, if he found that the property was unlawfully detained, order restitution?—It is very desirable such power should be given.

697. With regard to brokers, would you allow such power to a certain limited amount?—Yes.

698. If property which has been taken upon a charge of felony and conviction under a search-warrant is in the hands of the constable, have you any mode of ordering restitution of that property at present to the party aggrieved?—Yes, surely; either the magistrate or the Commissioner may make such an order; if it is a common constable, the constable would not be doing his duty if he did not obey the direction of the magistrate or of the Commissioner.

699. Must not the property remain in the hands of the constable to await the issue of the trial?—Yes, for the purposes of the inquiry.

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700. *Chairman.*] YOU now preside in one of the courts of quarter sessions in Essex?—Yes.

701. You are the author of a book entitled "Outlines of a Penal Code," which was published many years ago?—I am, respecting which I may say that the notes of that book Sir Samuel Romilly saw; I have the number of cases tried in the county of Essex, at the sessions, and at the assizes, since the year 1822; the whole amounts to 7,962, of which the judges have tried 2,636, and the sessions have tried 5,326; I may say that rather more than 3,000 of those I have tried.

702. Can you at all inform the Committee what description of offence has been the most frequent?—The common larcenies, or what now might be called simple larcenies, are the most frequent. Since the repeal of capital punishment very important cases come before us now, and they have increased in number; the Central Criminal Court took about 30 or 40 from us in the last two years, which should be added to these.

703. Do you think the tribunal a good one for the trial of cases of simple larceny, considering that the facts of such cases are generally few and easily proved, and that the offender has to undergo, frequently, a considerable period of imprisonment previously to his trial?—I think that there are a numerous class of cases which it would be beneficial should be tried more speedily and in a more summary manner; there are a great number of cases of simple larceny, which might quite as well be disposed of with less process and in a shorter time; I think that a summary jurisdiction over cases of simple larceny would be beneficial; I am speaking as acquainted more with the country cases and the country population than the metropolitan.

704. Is not a very extensive summary jurisdiction now exercised by the magistrates under several Acts of Parliament?—Yes, there is a summary jurisdiction given to the magistrates in so many cases that may not be called indictable cases, that it has always appeared to me as being instrumental in diminishing not only the respect that is generally due to magistrates, but it also tends to disturb their attention; supposing we look at them as a court of criminal jurisdiction, and there are no less than 283 subjects now named in Burn's Justice which magistrates are expected to attend to; and some of them appear at variance almost with the business of a court sitting criminally upon indictments; I think that it would be exceedingly beneficial to separate the criminal jurisdiction, by which I mean the trial of indictments, from all other jurisdictions of magistrates; I must own, that my impression is very strong, from my experience, that it would be much better for the country at large, and certainly a great relief to the magistrates.

705. What are those other jurisdictions of which you speak, which you would now separate from the criminal jurisdiction of the magistrates?—I think it would be beneficial to separate the power of commitment; the first inquiry should certainly go on before persons who take no part in the subsequent trial; I mean as a matter of principle; it is not so now; I have been so strongly impressed with that myself, that I have in no instance been present at the previous examination, where

where the question has come before the sessions; I have sometimes been called upon to attend at petty sessions, but since the Criminal Court was so much entrusted to my care, I studiously avoided being present at any examination of a prisoner, when he might appear before me again at the sessions for trial.

706. Then you are of opinion that the prevention and detection of crime should be, as far as possible, separated from those magistrates who are subsequently to act as judges in the case of the offender brought before them?—Most decidedly.

707. That is to say, that the judicial and the executive duty of the magistracy should be as far as possible separated?—The duty of catching the thief, or detecting and putting him in a course of trial, should be in hands perfectly distinct from those who are to inquire into the truth of that afterwards; for when a magistrate commits a man it bespeaks an opinion of his guilt, for he never would commit a man whom he thought innocent; then if he does that, and afterwards tries him at the sessions, or takes part in the trial at the sessions, he is in truth sitting in judgment upon his own conviction; it is morally an appeal from the convicting magistrate to the jury or to the magistrate who conducts the case before the jury; for that reason I think the two duties should be separated.

708. You would even object to the committing magistrate sitting upon the bench to try the offender whom he had committed for trial?—Most certainly; as a matter of principle, the Committee will understand, for I cannot impugn any particular persons upon it; that has always been my opinion, for we are all apt to do this, I do not know that I am free from it myself, and therefore I have not acted in that duty since I presided at the sessions; when we commit a man, believing that we do not do an act of injustice, we wish that that should turn out to be right rather than otherwise, and the acquittal of the man, some magistrates might think, would be a reflection upon their judgment, in the first instance, in committing, and therefore such a magistrate might attend a trial with a bias towards a conviction.

709. Is there any ground for supposing that the commission of the peace did originally separate those duties?—I was looking at the commission the other day, and it does appear to me that that was almost the meaning of the quorum clause; and the very old Commissioners seem to have been Commissioners for the purpose of trying offences something like the judges' commissions; for the Committee must be well aware of the clause which gives to them the right of calling upon the sheriffs to summon a jury and hold their sessions; and it is said some things are to be done by the more learned of the commission; and Burn speaks as if there were certain persons in that original commission more called upon to attend to the judicial than the executive part of their duties, and those duties have been almost added by statutes since; in some instances a magistrate is required to go and look into an ale-house to see whether that is right or not; in cases of riot under the Riot Act, he is obliged to go out almost in the shape of a constable, and yet he may be the person who tries the man for the riot at the sessions, in case he is indicted; those have been the consequences of time; I take it that subsequent statutes have introduced it; then in stopping people upon the highway in driving carriages and carts along, the magistrate is positively the informer; it seems to me that the character of the judge would be purer, supposing that he had nothing to do with those things; and in fact, when the judges come into the county, they become quite as such, abstractedly and practically as the judges of the criminal court, and they have nothing else to do with it.

710. Mr. *Estcourt*.] Do you find, in your historical researches, that any of those whom you describe as being of the quorum were either exempted or excluded from acting in those minor cases that you have adverted to at the close of the last answer?—No, I do not see that they were; they do not seem to have got to that pitch of refinement, if I may so call it; but there were certain persons on the quorum of whom A. B. and C. were supposed to be learned, as Burn uses the phrase, who, on particular occasions, must necessarily form part of it; I was looking with that very view to see whether there was any thing like a clear distinction taken, that they should be prohibited from doing one duty, and kept only to the other class of duties, but that I did not find.

711. So that in certain aggravated cases justices of the quorum were required to be present, in order to give security for the due administration of justice in those cases; but there were no cases where the quorum were excluded from acting, and where other magistrates were empowered to act?—No, I do not think I did find that distinction; It is grown rather from time; in the Municipal Corporation Act committing magistrates are prohibited from sitting at sessions.

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712. *Chairman.*] And under that Act recorders are prohibited from acting as justices?—Yes, the recorder is ordered to be the sole judge.

713. Do you think that this intermixture of duties has rather tended to diminish the respect which would otherwise be paid to the magistrates in their judicial character?—Decidedly, because a magistrate sitting down upon a question to-day, about licensing an ale-house, or selling game, or any of those secondary questions, may fall in the way of a number of persons who may be jurymen or witnesses or prosecutors at the court of sessions, with whom he ought to have as little communication as possible; he may be the licenser of a witness, or the convicter of a juryman in some other way; he should sit upon that bench quite abstracted, quite divided from those possibilities; I speak from the strong impression upon my mind, that I would abstract the magistrate sitting at quarter sessions with his jury as completely as the judge is abstracted.

714. Mr. *Clay.*] You have alluded to a separate function being confided to the magistracy, namely, the licensing of public-houses; is it your impression that the discharge of that duty is not of a nature to increase the respect and confidence in magistrates acting judicially?—I think it is of a nature very much to diminish it.

715. Mr. *Estcourt.*] Is it in your contemplation to have in your county a separate body of magistrates to act as the judges at quarter sessions, who shall not execute the duties of a magistrate in ordinary cases?—I am very much inclined to think that it would be a beneficial thing, as the criminal business of quarter sessions is very much increasing, both in importance and in numbers; our numbers used to be, in 1823, at the quarter sessions, 381; in 1836, they were 426. In one year we had above 500; but then we have house-breakers; we have persons privately stealing from the person; we have horse-stealers, sheep-stealers; all those were formerly capital offences; and now, the capital punishment being repealed, the jurisdiction is, as it were, restored to the sessions, and they become very important cases. There is no more real difficulty in trying a man for stealing a horse than for stealing a spoon: but in some cases there is the intention to be taken into consideration, and great nicety is required upon the construction of the statutes.

716. Then perhaps you would exclude the ordinary justice of the peace from sitting in quarter sessions, and you would have the appointment of some judge or judges in the shape of recorders or assistant barristers, who should take the duty of delivering the gaols at the several quarter sessions?—I think something of the kind should be done; I think that the duties should be separated from those duties performed by the magistrate in the general government of the county. Then again with respect to gaols, I am one of the visitors of the gaol; I hold it to be the duty of a visitor, strictly speaking, to see the prisoners and the interior of the gaol, alone, when the gaoler is unaware of his inquiries, as a protection to prisoners; but I think as the chairman I ought never to do it, and never have done it; because I think it very unfitting, constantly sitting in the Crown Court, to see a prisoner whom I have not tried, or to see a man after I have tried him. I think it would be very unfitting for me to go among the prisoners; a man might say, "I hope, sir, you will be merciful to me; I shall be tried next session;" and I have never visited the gaol. I have attended the board sometimes; I may have carried my feelings rather far, but other gentlemen perform the duty exceedingly well, and the county do not lose the benefit of the thing; but individually I have kept aloof. Whether Parliament might choose to select a certain set of gentlemen in the commission, and direct that class of duties to be performed by certain gentlemen, whom they may think competent, either as barristers or as practical men, or to whom they would give the power of holding the quarter sessions distinct from the rest, is for Parliament to consider; but separating the duties, I think, would be of benefit.

717. Mr. *Scrope.*] Your objection seeming to be founded upon principle to any previous interference of the judge, who is to sit as judge upon the criminal case, with the preliminary proceedings upon that case, does it not equally apply to all proceedings, in which a magistrate or a bench of magistrates at petty sessions has similar power, as well as to those cases that are brought before magistrates at quarter sessions?—It does not apply, unless the magistrate, in the first instance, inquires into the case and he afterwards tries it; in most summary convictions the cause is begun and ended at once before the same tribunal.

718. Does not the magistrate, in almost every case, issue a summons or warrant previous to hearing the case, and does he not, on that occasion, hear a statement of the facts, and probably form an opinion before it, and in the same way as he would

would in the case of committing the man for trial?—Yes; I think the more perfect method would be, that he should know nothing of it till he adjudicates; that the person who adjudicates should know nothing of the matter till the case is brought forward, as an indictment in the court of quarter sessions; often they come before one magistrate and say, "I want a summons;" and the magistrate hears the case itself, and he has a previous knowledge of it, but then he does not give a judgment upon it.

719. Take a case of assault, or a case of poaching, or a case of malicious trespass, either of which is within the summary jurisdiction of a bench of magistrates; in all those instances it is probable that the magistrate who has issued the warrant or the summons will have heard the facts of the case, and will have heard all the witnesses in support of the charge, and will be liable to precisely the same imputation of having formed a previous opinion of that matter, in which he is to be judge, as in the case brought before magistrates at the quarter sessions; is not that so?—I think it would be much better if it were otherwise.

720. But, speaking practically, do you imagine that it would be possible to introduce that system, which should separate completely the judicial and executive power of magistrates throughout the country?—I think a court might exist which should try those persons, and have no interference whatever with the previous catching of the thief, if I may so say; but one set of men should have the original power, the power of taking and committing an offender, and then they should send him to another tribunal, and that other tribunal should have no power previous to that.

721. Do not you think it an advantage, in the present system, that the magistrate who first hears the facts of the case, has an opportunity of endeavouring to compromise, or to facilitate an amicable adjustment of the differences between the parties, which would not be the case if he had not the power of ulterior jurisdiction?—In very small offences, of not very great importance, perhaps, it is more practically beneficial that he should have the duty, but certainly not in the more important cases; I quite agree with Mr. Hardwick, that a summary jurisdiction in some felonies would be a good thing, but I would not have the magistrate who tries that case catch the felon.

722. *Chairman.*] Your observations apply to the country generally?—Just so.

723. Do not they apply with greater force to the metropolitan districts, where there is a constabulary force for the repression of crime, and where there is a body of police magistrates, who might be made a body purely for the trial of offenders?—I think so decidedly; I think that they do apply very strongly, and that supposing the present police system in London should be the thief catcher, and that the smaller magistrates' courts here should be made trying courts, I think infinitely better than that the present magistrates' courts should merely begin a case, and then try it afterwards; I think that division would be greatly beneficial, and I think that it would be beneficial in the country too, where, if I may use the popular phrase, one man should catch the thief, and another try him; I think it would be very beneficial in the country to have a police; we there want protection, in my opinion, and that body should be distinct from those who are to try the man; let the policeman take the man and be responsible for that.

724. When you say that it would be an advantage to the public, that one body should be employed in the repression of crime, and the other in the trial of the offender, you mean, by the trial of the offender, that trial in the first instance before the committing magistrate, as applied to London?—Yes, as applied to London; one man should find out the accused or take the accusation, and another should try the truth of it, as the balancing power between the accuser and the accused.

725. You have said that the great majority of the cases that came before you at quarter sessions are simple larcenies?—They are sometimes; we have cases very small in appearance and upon the first statement, but it turns out to be the detection of a notorious thief; I know an instance of that, a very strong case indeed, where a man was committed; a case in which the magistrates would have said it had better not come here; it was for stealing a small quantity of straw, and I tried the man; and as soon as ever I saw the man, I knew him, and so did the gaoler; it turned out that that was the fourth or fifth time that man had been tried, and for greater offences.

726. Have you found much difficulty in the proof of the facts, and entertained much doubt of the guilt of the parties?—I think, that generally the facts are pretty

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clearly made out; and if I may pass a judgment upon the acts of other gentlemen, I do not think we have had many commitments without being substantiated.

727. Are there generally many new facts elicited upon the trial?—Not often.

728. Then in your opinion the first committal is generally confirmed by the subsequent conviction? —Yes, generally speaking.

729. And you rarely find either fresh evidence required or new facts elicited beyond those upon the depositions?—Not often; it sometimes happens in going into the defence more largely at the trial that new facts will come out; the defence is generally gone more fully into at the trial than it is at the commitment, for often at the trial counsel are employed, and before they could make speeches there was a great deal of evidence produced.

730. Do not magistrates often send for trial, when if they were trying an offender by a summary jurisdiction, they would not convict? —I do not think the magistrates ever send a man to the sessions for trial when they would not convict him themselves if they had a summary jurisdiction.

731. Is not a magistrate bound to commit upon a *primâ facie* case of guilt against a party under the present state of the law?—Yes, but that depends so much upon his own judgment whether it amounts to sufficient to induce him to commit.

732. But there being another tribunal, is he not often led to send a party to trial when if he had a summary jurisdiction he would go into the whole case and commit only upon strictly legal evidence?—Yes, that happens frequently; he might say, "If I had the power to go further into this case to a judgment, I would not commit this man, I would go further into it and come to a conclusion."

738. Then considering what an important effect the commitment in the first instance has upon the offender, particularly if he be an offender for the first time, do you think that trusting properly qualified magistrates with this summary power would be prejudicial to the public, or do you not rather think that it would very greatly tend to diminish the actual number of commitments?—I think it would be beneficial to the country that magistrates, such persons as the law might choose to entrust with it, sufficiently qualified, should have a summary jurisdiction in cases of felonies, alluded to in a former part of my examination. I quite agree with Mr. Hardwick in thinking that a jurisdiction of that kind would be beneficial, and I would not limit it to age, nor would I limit it to the nature of the offence, except that I would limit it to cases which were unattended with violence to the person or in cases which we ordinarily call simple larceny; the parties on their defence might have the option of being so tried, or of going to quarter sessions; I think that that would make the thing more palatable, if I may say so, to the country, and eventually I think you would find a vast number of persons who would prefer that mode, who would say, "I would rather have it over at once," limiting the punishment to what the Legislature might think fit

734. This summary conviction, involving, as it does, the abolition of the trial by jury, might perhaps be regarded with apprehension by many; what is your opinion as to the value of trial by jury, in cases of simple larceny, having reference to the previous commitment of the party to gaol before he is found guilty, and having reference generally to the value of that institution, as an instrument to investigate facts?—I think that there are two cases in which the country would be satisfied with the suspension, as it were, of the trial by jury; if a man were accused of a simple larceny, his confession might be proved legally and technically, and if the prisoner had confessed his guilt, I think that might be left in the hands of the magistrate with summary jurisdiction, provided that that confession should be technically and legally proved. And again, I think, in cases where the party chose to submit himself to that tribunal, that the country would not complain in either of those cases of that proceeding without a jury.

735. You would limit this summary power to cases in which the party consented to the jurisdiction, and to cases in which the party confessed the crime to the satisfaction of the presiding magistrate?—Yes; that confession being limited to the technical proof of a confession.

736. Would you give a summary power to the magistrate absolutely in all cases of simple larceny or not; not limiting the jurisdiction to cases in which the parties consented, or in which confession was made?—I should rather be afraid of that at the first trial.

737. Will you state your reasons for that apprehension?—Because some crimes that are known by the name of simple larceny are attended often with circumstances that

that are very serious, and where a man requires a heavy punishment; it might be his second or third offence after his former conviction; he might have been tried and convicted of other larcenies before that; (the law would perhaps require two magistrates for that tribunal) if they tried him for a second offence, he would, in my mind, require a heavier punishment; and then he would be very glad to say, "I will be tried by this tribunal," or he might make a confession for the purpose of being so tried, in order that his punishment should not go beyond a year's imprisonment, we will say; but now in cases of second convictions it is almost the rule, as far as rules can be laid down in matters of the kind, to sentence the man to transportation as a matter of course; and I think that should be so, where the facts justify it.

738. Supposing this power were to be entrusted only to magistrates who were properly qualified by legal education, and also appointed by the Crown, having salaries, and therefore being invested with a judicial character, what would be your opinion, under those circumstances, of extending the summary jurisdiction to the single magistrate?—My objections are those which I have just this moment mentioned; it must be a limited punishment. I suppose it would not be imagined that a single magistrate, in such a case, would have the power to transport a man.

739. Assuming that the magistrate, as described, always had the power also to refer the case, should he see fit, to the court above, whether from the aggravated circumstances of the case, or any difficulty in the law of the question, would you then see any objection to entrusting such a magistrate so qualified with this power?—I think that then the objection would be cured, because the magistrate, on seeing that it was a second offence, it would be in his power to say to the prisoner, "I find it is your second offence, therefore you are by law transportable for that offence, now you shall go to another tribunal, and not be tried here;" and that I think the magistrate should have the power of doing.

740. Mr. *Scrope.*] Do you contemplate giving to this tribunal a summary power of transportation in aggravated cases or in second offences?—Certainly not; not without the intervention of a jury; I think the country would not like that.

741. Then in cases of second offences, which by law are liable to a heavier punishment than 12 months' imprisonment, which is the highest punishment you would give to this court, you would describe it as the duty of the magistrate to send the case to a higher tribunal?—Yes, I think, certainly, where the punishment would be greater than that which he had the power to inflict; I would then send it to another tribunal; in the case of a man assisting in sheep-stealing, (sheep-stealing is a single larceny, but punishable with transportation for life peremptorily,) if therefore he were tried by one magistrate, that magistrate, if you give him jurisdiction, in cases of sheep-stealing, must inflict punishment of transportation for life; but I should say even if it turned out to be sheep-stealing he should send it to another tribunal.

742. Would there not arise this difficulty in a summary tribunal, acting very speedily after the commission of the offence, that there would not be time to discover whether the offender had been previously convicted of an offence?—That would be an evil which the public must suffer, or the price they must pay for the speedy tribunal as a countervailing good.

743. *Chairman.*] The great advantage of a summary jurisdiction would be this, that you bring the punishment immediately to bear upon the offender?—Certainly.

744. That you also avoid imprisonment, which generally is productive of very great evils?—Certainly.

745. The evil of summary jurisdiction is this, that you entrust the magistrate with considerable power, which, of course, without the intervention of a jury, he may abuse?—Just so.

746. Balancing the evils and the advantages, what is your opinion?—My opinion is that summary jurisdiction would be beneficial; the advantage would be great in this respect, that supposing, in point of fact, an old offender was taken before a summary tribunal which knew nothing of his former transactions, it would be a benefit that that man should, for that simple offence, be punished without any reference to any former offence.

747. Because immediate punishment would tend to defeat crime?—It would be visible in other people's eyes; what led me to speak of the former conviction was with regard to the punishment, that the magistrate would find himself in difficulty;

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but it would be a public good, whether a man has been convicted or not before, that the man should be convicted under certain regulations summarily.

748. If the trial by jury be so valuable as a protection to the subject, looking at the period for which an offender may be committed to gaol, by which his character and his prospects may be blasted, should not the jury, if it be allowed as a part of our criminal procedure in those petty cases, be empannelled in the first instance previous to the committal of the offender?—Yes; if it could be practically done, the magistrate might take what is called a jury *de circumstantibus*, as it were, instanter, giving the man all the privileges of a challenge; he might say, "I do not like such a juryman," so that he could object to the man.

749. But still in the point of view that it is thought a protection to the subject; in that point of view it ought to be brought into action previously to the first committal rather than upon the subsequent trial of the offender when he has undergone imprisonment and punishment for an offence of which he may not be guilty?—Yes, it would save all the difficulty of imprisoning a man for a considerable time before, which sometimes, though I do not like the practice, is taken into consideration in passing the sentence.

750. Mr. *Scrope.*] Your opinion in favour of this summary jurisdiction seems to hinge entirely upon the magistrate before whom the case is heard being properly qualified?—Yes.

751. Would you entrust such a power to the single country magistrates at present?—Certainly not to every magistrate; as the commissions are now made up it would be rather unfair to call, for instance, upon a retired clergyman acting in a parish by himself to perform this duty; he is now in the commission of the peace, and does nothing whatever but in *forum domesticum* in the village about him, and leaves all the rest of the duty to the other magistrates. It would be unfair to put upon him the trial of offenders.

752. Inasmuch as hitherto the law has made no distinction between the powers entrusted to single magistrates, whether paid or unpaid, whether of town or country; this increased power which you propose to give to the single magistrate, it is your opinion, should be confined to stipendiary magistrates?—It should be confined to persons who might be held entirely responsible, and persons strictly qualified.

753. Do you think that the responsibility and qualifications of individual magistrates, appointed as they are now appointed throughout the country, is not sufficient to warrant such a power being entrusted to them?—Not generally; I think that the Committee must be aware that the quarter sessions require the presence of two magistrates; the court must consist of two magistrates, at least it very often consists of no more than two, but there must be two.

754. Do you think that it would be safe to entrust this power to the bench of petty sessions, any number, two or three, being a quorum?—Yes.

755. That bench consisting of the existing magistrates?—Yes; where they collect together and are in the habit of doing business, some will have been in the habit of doing business much longer than others; it would be better than entrusting it to a single magistrate at his own house.

756. Are not there many cases in which at present a magistrate exercises a summary jurisdiction which you would think it equally desirable upon the same grounds to be confined to the quorum of magistrates at petty sessions?—Perhaps it might be so, but it is not always possible to get two magistrates or three magistrates in some quarters of the country.

757. Is it the practice within your county for single magistrates to act in their own parlours, without the presence of a clerk, in criminal cases?—No, I do not think so; I do not see what they do at a distance; I never did any thing myself at home, for the reason I have given now, that I sit so constantly at the sessions.

758. You are not aware of the practice, but the power exists?—Yes, the practice is very common to hear the man and commit him, but the more common practice is, that the magistrate in his own house takes the first information, and makes his warrant returnable before the petty sessions, which will assemble in a day or two.

759. Is it not a gradually growing practice for all cases where summary jurisdiction exists to be heard rather at petty sessions, where more than one magistrate attends, than in the private houses of individual magistrates?—Yes.

760. Is not that a practice more consonant to public security than the former one?—Yes, I think the magistrates are more particular upon that point now, and the

the practice is increasing, to refer the case to the petty sessions, rather than hear it alone; I know many gentlemen who have a proper feeling about that, and say, "I had rather have this heard before others."

761. *Chairman.*] Would you extend the summary jurisdiction which has been described, in all cases of petty larceny, to the magistrates in petty sessions?—Yes, the summary jurisdiction, I think, had better be in the petty sessions than in any individual acting in his own house.

762. You have stated, and it is generally admitted to be the fact, that the trial by jury is a protection against abuse of power on the part of the magistrate?—Yes, I think it is.

763. Abolish the trial by jury in the case supposed, and leave it to the magistrates in petty sessions throughout the country, constituted as they are, what security has the public against abuse?—The security would be in the ability and competency of the magistrate, in requiring that the proceedings should be public, and in setting a limit to his power; there should be a limit to the punishment; and, in some degree I think a limit to the cases, that is to say, to cases of legal confessions and cases of consent, because then if the question is asked, "Why is this man to be deprived of a jury?" in the one case it is so clear that you do not require a jury, namely, if he confesses it, and in the second case it is the prisoner's own choice, he having removed what is certainly a security; that is the reason for the proceeding, and if the power were exercised at petty sessions, I think it would be better than in the magistrate's own house. If I may say a word upon the security of the juries, I think the security of the juries, as a check, has been diminished since the passing of the Prisoners' Council Bill.

764. Mr. *Clay.*] Why so?—Upon the trial by jury; it has struck me very forcibly, I see now, and I saw it before the Bill passed, that it throws the verdict more into the hands of the court. The trying judge, after an energetic speech made by the counsel in favour of the prisoner, in which he introduces all sorts of irrelevant matter, is driven to do this (and I have felt it), to say to the jury, "Gentlemen, you must not mind what Mr. Jones or Mr. Williamson has said; your oath is, that you are to try the prisoner by the evidence, and now you must take that from me," and they can get it nowhere else. I must in justice do that, because in the short time that the Act has been in power, the counsel are getting into the habit of throwing imputations upon the prosecutors; now if they do that without proving those imputations, it is the duty of the judge to counteract that impression; that was not done before they made a speech; I put that very strongly before Mr. George Lamb four or five years ago, and I then felt it so much that it often makes my duty very onerous. It has happened to me, that the counsel, a young and inexperienced man, gratuitously throws imputations upon the prosecutor; I stop him, and say, "Sir, you must prove that, or you must not make those observations;" either the thing goes on; he cannot prove it, or assumes it, and makes all his impression; I say to the jury at once, "Gentlemen, you must blot out from your minds every thing that has been said about the prosecutor's motive; he comes here honestly; the prisoner's counsel, if he insinuates a bad motive against him, must prove that; now, gentlemen, you must throw that out of consideration, and you must take the case from my notes." What a power that throws into our hands! I am supposing myself liable to that which all persons are, and I make out the case with an impression desirous to overcome what the counsel has said.

765. How is it that the allowing counsel to prisoners, throws more power into the hands of the court, inasmuch as after the exhortation to the jury not to attend to imputations not proved by the evidence, the court then only resumes the duty with which it must always have been charged before counsel were allowed to prisoners, namely, that of summing up the evidence?—Because then the court must make some exertion to get rid of an impression, which impression would never have been made, had the speech of counsel never been made, and those impressions not true ones. You cannot leave the prosecutor under such insinuation without telling the jury, "Gentlemen, you must attend to the facts, and I will give you the facts, and you must not put any imputation upon the prosecutor because the prosecutor is a rich man and the prisoner a poor man, and you must find this man guilty, or you will imply that the prosecutor is guilty of perjury;" the magistrate must sometimes go as far as that.

766. Mr. *Clive.*] What, in your opinion, is the result of the Act; do not convictions increase rather than diminish?—We have had so very short an experience that I can hardly say, but I think it will tend to increase them; I think it unfavourable to the prisoner.

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767. Mr. *Scrope.*] Your impression therefore is, that the change which has taken place by permitting counsel to prisoners, has rendered it imperative upon the judge to interfere more dictatorially and authoritatively in charging the jury than he was in the habit of doing before, and that that interference is on the whole prejudicial to prisoners, whether innocent or guilty?—Yes.

768. *Chairman.*] Is it prejudicial to justice?—No, I do not think it is; but then I must explain that it is throwing the thing on the court, and not on the jury; it is putting the judge in a new and unpleasant situation; he must then become, I will not say the advocate against the prisoner, but he must reply upon his counsel.

769. Mr. *Scrope.*] And by giving intensity to the action of the judge, it diminishes the exercise of the power of the jury?—It gives the judge, and almost imposes on him, a more active impression or line of conduct against the prisoner ultimately, than he would otherwise adopt.

770. Mr. *Clay.*] It appears then to be your opinion, that in consequence of counsel being allowed to prisoners, the judge is induced occasionally to press more strongly than he otherwise might be inclined to do upon the jury, the force and bearing of the evidence?—Certainly.

771. It would seem then to be your opinion, that the persons really guilty, have less chance of escape?—Yes, that would require some modification; certainly persons really guilty have a less chance of escape, but it is by means of the judge and not of the jury.

772. Still the result would appear to be, that the ends of justice are therefore more completely answered?—Yes, I think so; supposing that the jury still has sufficient of the check left to keep the judge from being too severe or too strong in his observations; you must trust to the jury at last.

773. Can any evil result from the jury being put more completely, from whatever cause, in possession of the real bearing of the evidence?—No; but I think that the jury would be put into possession of it much better without a speech than with it; by having no speech on either side, the jury, in my opinion, would get at the facts much better; if the counsel for the prosecutor had been prohibited from speaking, and copies of the evidence given *de jure* to the prisoner, and let the counsel examine both of them from them, so that it should be strictly an examination as to the truth, and no flourish on either side; but while one speech was made, it was, to be sure, anomalous, not allowing the counsel for the prisoner to address the jury.

774. The great value of the institution of the jury being supposed to be in order to guard against any possible bias of the court, in what respect is their power to protect the innocent person lessened by the consequences that you have just detailed to the Committee of allowing counsel to prisoners?—I do not think that their power of holding the balance of justice as to facts is at all diminished by it; but I think that after a long trial juries will be tired, and more guided by what the judge says; and now he must take a stronger line than ever he did before; they will be less inclined to find a verdict against the court than they were before; it makes a material difference where a judge sums up to the jury so as to show them the fallacy of the counsel's defence, which he is bound to do in justice, than when he has only to tell them what the law and the facts are, the man having made no defence at all, where simple truth was to be investigated, because then the impression was always rather in favour of the prisoner.

775. Mr. *Scrope.*] It imposes, does it not, upon the judge the necessity of acting to a certain extent as advocate for that side of the cause which it appears to him has been damaged to the prejudice of justice by the superior force of the counsel?—Certainly; and so doing has put the judge in a very unpleasant position, in comparison with the situation in which he was; it has also involved the counties in another thing; we have always, since the Act came in force, ordered counsel for the prosecution.

776. *Chairman.*] May not this practical deduction be made from the evidence you have given on this subject, namely, that the tendency of the Prisoners' Counsel Bill is favourable to the ends of justice, and also that it tends to raise the character and improve the qualifications of individuals presiding as judges, whether in the King's Courts or in the courts of quarter sessions?—I think that difficulties that arise at present may by time be overcome, and that it may ultimately tend to the advancement of public justice, and I think the experiment of allowing counsel is exceedingly fit to be tried; it will require, I think, some modification,

fication, and there is no doubt that it will require more powerful and more intelligent judges.

777. With reference to the opinions you have expressed, as to the expediency of giving a summary jurisdiction to the magistrates in petty sessions, do you think that the ability and competency of the magistrates is a sufficient protection to the public against abuse of power?—I think so; I think that the security in my own case is perhaps as great as it can be; there is one's station in life, and the character of every body about you, and the consciousness of doing right or wrong in the conspicuous station; those are securities which would operate very powerfully upon a man's mind.

778. Are they sufficient securities without adequate publicity of proceeding?—No.

779. Is there an adequate publicity given to the proceedings of magistrates in petty sessions throughout the country?—Not for such purposes as you propose; because very often it is the practice of magistrates to clear their rooms, which I have always protested against.

780. Do you think in the case of the metropolis, where police magistrates are properly qualified, that is, have been educated to the law, and where their courts are constantly frequented by the reporters of the press and the public, that this power might be safely entrusted which could not be safely entrusted to magistrates in petty sessions throughout the country, even supposing that there were amongst them gentlemen who had been educated to the law?—I think it might be equally trusted to both, supposing both courts to be equally guarded.

781. Mr. *Scrope.*] Might not the check of publicity to a very considerable extent be introduced into the practice of the courts of petty sessions; for example, the attendance of the public might be permitted in every instance, might it not?—It is permitted in every instance and in many places; as, for instance, in our own court, at Chelmsford, there is always a person that reports every thing that we do; on some occasions, when the magistrates want to determine, they clear the room, which I do not like; but, in general, our proceedings are as public as they can be, and in our court of quarter sessions all our proceedings are quite public.

782. Might not additional publicity be obtained by securing the inrolment in some book of record of all the evidence given in every case before petty sessions, which should be accessible in case of the decisions of that tribunal being at any time called in question?—It is the practice at Chelmsford to keep a book of notes of all that passes; the examinations of paupers, and removals, and so on, are kept regularly in a series of volumes; in the cases of felony, the evidence is kept by the clerk of the peace in the shape of examinations, and they are referrable to at any time, not always very full.

783. The preservation of that record might be made imperative upon the clerks of petty sessions, and should, in your opinion, be an accompaniment to the concession of a greater summary power to the magistracy?—Yes, if a summary jurisdiction is given to magistrates without a jury in cases which now require the interference of a jury, I think you cannot be too cautious in the mode of proceeding or too public in the proceeding; and then in those cases it would do a great deal of good. I ought to observe, that in my opinion, no proceedings in a court of justice can be too public; the public should be allowed to come in and to take notes in short-hand or any other hand; and I believe in a vast number of cases it is so, but in some out-of-the-way places it cannot be so, and in many petty sessions nobody troubles himself about it; but I know of no petty sessions where they would exclude them.

784. *Chairman.*] Supposing that the Committee were to be of opinion that the experiment of extending the power of magistrates over cases of simple larceny by a summary jurisdiction was expedient, do you think that that experiment could be any where so well tried in the first instance and under so many advantageous circumstances as in the metropolis?—Certainly it would be beneficial to have it tried in the metropolis first, and then to try it in great towns where there are police establishments and stipendiary magistrates; you would hardly give that jurisdiction to magistrates, leaving them to issue their warrants and so forth, as they do now, because I think it is quite essential to separate the judicial from the executive.

785. You would make it a *sine quâ non* that magistrates exercising those powers should be persons who had been qualified by their previous education to administer the law?—Yes, and they should not have taken part in any previous inquiry.

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786. Should you attach any importance to those magistrates sitting in their bar dress?—If they were stipendiary I would have it so, like the recorders, but not as county magistrates.

787. Should you attach any importance to the courts in which they sit, being constructed more as courts of justice rather than as police offices now are?—Certainly, I would give them the air of a court of justice, as much as I could.

788. Do not you think that those circumstances would tend both to increase the respect of the public towards the judge, and also act as a constraint upon him in the discharge of his public duty?—Certainly.

789. Mr. *Scrope.*] Can you give any opinion as to the average attendance upon the bench of magistrates at quarter sessions within your recollection?—I can only answer as to our county; our own practice is, that the county business is done on the Tuesday, on which occasion there are always a great many magistrates, 20 or 30; I have known more than 30; the next day the two courts sit, one for the trial of appeals and the other for the trial of prisoners, and then the attendance is pretty full; but when the sessions have lasted perhaps over the third day, or over the fourth day, I have had a great difficulty in finding a second magistrate to sit with me.

790. Then during the last two or three days of the sitting of the court in criminal business the attendance of the magistrates on the bench is rarely, if ever, more than the average attendance of magistrates upon the bench of petty sessions?—Just so; in the latter part of the sessions, if it continues to a third or fourth day, there will be as few magistrates at quarter sessions as at petty sessions; sometimes I have had a great difficulty, upon the third or fourth day, in getting a second magistrate to my court.

791. *Chairman.*] The object of the questions which you have recently been asked has been this, to show that the same degree of publicity attends the proceedings in petty sessions as is attendant upon the proceedings in quarter sessions, because the number of magistrates may be the same; but is not the court of quarter sessions, in point of fact, a much more public court than the court of petty sessions?—Certainly; but the more publicity there is, and the more you can make it look like a court of quarter sessions, which is an acknowledged and respected court, so much more beneficial will it be to the advancement of justice; it will increase the respectability of the court itself, and I think it would answer all those purposes of good in preventing crime; but the most fatal evil in a court is, that it should be considered as a small or a secret court; that is the worst thing that can happen.

792. Assuming this power to be invested in the magistrates of the metropolis, what would be the nature and extent of the punishment which you would empower them to inflict?—I would not have it go beyond 12 months' imprisonment; there should be, I think, the power of whipping, limited with regard to age and sex, of course; our practice is, with regard to that, when we try a boy 15 or 16 years of age, to give him a very short imprisonment and a whipping, and to keep him entirely by himself; now his amount of imprisonment is 14 days; we keep him entirely by himself for that time, and then whip him and let him out, and the practice generally is to whip him as he goes out, because the impression is then stronger upon his mind that he does not like the gaol; our court have laid down a scale; they have not left it to the discretion of the gaoler; the sentence may be given in these terms, "Let that boy be whipped;" but the gaoler is furnished by us with a scale; it is this; the sentences are as follows; a severe whipping is 50 lashes; a public whipping is 50 lashes; but a private one is 36; for persons who are admitted for correction, a whipping is constituted to mean a whipping not exceeding 12 lashes, and for wood-stealing 24 lashes; this is a rule entered into by the magistrates, and which the gaoler pays strict attention to; it is not left undefined.

793. Who superintends the infliction of it?—The gaoler; it is inflicted with the common cat-o'-nine-tails (I had this from himself the other day) and by the drum-major of the county militia; I may take the liberty to observe, that whipping as a punishment may in some instances, under the statute, be directed three times for the same offence, and there is no time defined between those whippings; it has never been inflicted in any way improperly in that respect; but the Act does not state that such a time should elapse between each whipping; and I suggested in my book, that where whippings are inflicted more than once, there should be a month

month between them, or something of that sort; otherwise it might be repeated too soon, since there is no restriction as to that in the statute.

794. Mr. *Scrope.*] Would it not be equally important that the statute should prescribe the nature of the instrument with which the punishment should be inflicted?—Certainly; in the code which I have drawn up, it is stated how it is to be inflicted, and with what instrument.

795. In your gaols the punishment is inflicted in the same way as in the regimental flogging, is it not?—Yes; but certainly not so severely; I do not think that he whips to the utmost of his strength.

796. Is it the same man that you employ?—Yes; but the magistrate never sees the infliction of the punishment.

797. Mr. *Estcourt.*] You state in that scale of punishment which you have given, that in private whippings a less number of lashes is given than in public whippings; is it the intention that the private whipping should be a milder description of punishment than the public?—Yes; because it is generally appropriated to the very youngest offenders, so that the exposure may be less to them; to the boy of 15, if we order a private whipping, it would be as great a punishment to him as the exposure to a public whipping, and he may be more likely to regain a good character.

798. You mean that a similar number of lashes inflicted in private is a less punishment than an equal number inflicted in public?—Yes; the punishment is the exposure, if he has a character to regain; it is not seen.

799. Do not you think that the infliction of whipping in public rather tends to mitigate the mental suffering of the individual than to increase it?—It seems to me that the man would suffer much more by having his punishment in public; he would have the additional severity which the feeling of public disgrace would occasion; I should think that a private whipping of the same degree of personal suffering would be a less punishment than the public one, because the other would be the bodily pain plus the public disclosure.

800. *Chairman.*] Do not you think that all assaults should be punished with hard labour, keeping, however, the alternative of fine and imprisonment together or separately?—Certainly, I think that all assaults should be punishable with hard labour, leaving the alternative of a fine and imprisonment, or either of these only.

801. Has it ever been brought to your notice that a great many disputes, and sometimes assaults, arise from the use of insulting language and such annoyances as are not absolutely punished by law, and do you think that for such provocation to a breach of the peace it would be desirable that the party should be held to bail or compelled to enter into sureties?—I think it would be an exceedingly beneficial thing in many, I may call offences, not crimes, such as insults and abuse, and those which are grievous annoyances to the person, and for which there is no remedy at all but civil action, and that uncertain, that there should be a jurisdiction to punish them, which jurisdiction should have the alternative power of imprisoning or holding to bail for good behaviour, and so forth, which should be holding them to bail for a specific sum or a specific time.

802. That is, they should be called upon to enter into their personal recognizance, subject to the forfeiture of it in the event of the repetition of the offence?—Yes, and another observation I have to make upon that is, that the difficulty of getting at the recognizance after it is forfeited is very great. A man enters into recognizance to keep the peace, and he breaks it; the mode of getting at that forfeiture, which in fact is the punishment, is by application to the Court of Exchequer; there is no short process for that, as I understand.

803. Mr. Alderman *Wood.*] Do you adopt the plan, with regard to assaults, of calling in aid two magistrates so as to fine the individual before being indicted?—Yes, it is often done at petty sessions; they fine the man very often, instead of committing him to quarter sessions; but in the case of two women or two men abusing each other, that may go on to the nuisance of the whole neighbourhood, and there is no way of preventing it.

804. *Chairman.*] Until a breach of the peace is committed?—Exactly; I would take the liberty to observe, that there is a great defect in the Trespass Act; it requires that the damage shall be proved. If a man intrudes himself into your private garden, or any part of your premises or fields, or any thing else, you cannot

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prove an absolute damage, but it is an annoyance, and yet there is no remedy, under the Act. You may bring an action on the case against him, in which you need not prove a special damage. Lord Chief Justice Best laid it down so. In fact, it repeals that statute as to the evils which it was meant to correct.

805. Is it not desirable to extend the power of taking bail to cases of re-examination?—Yes; it almost stands upon its own foundation; because if the magistrate says, "I think that this is so imperfectly made out, that you must come again," there should be that power; I do not think it should always be exercised, because you may get hold of a very bad thief, and I would not take his bail; but the magistrates might have the power, where they chose to exercise it, and very beneficially.

806. Have you any further observations to make in addition to those you have made?—In my opinion a rural police is quite essential, inasmuch as at present all the thieves are driven from London into the unprotected country; that rural police should be charged with the care of the roads, nuisances as to carts, and people driving badly, turnpike-gates, and the nuisances that are happening there. Another suggestion which I would make is, I think it would be well if the prisoners should have copies of their examinations given them, as a matter of right; they now have it only by asking for; and we have found inconvenience in that.

807. Mr. *Scrope.*] Do not you think that the magistrate's clerk might be made a more respectable office, if qualified persons were taken to fill that office?—Yes; and all persons concerned in public justice ought not to be concerned in any other business; they should be prohibited from being agents in elections, or coroners or deputy county treasurers.

Jovis, 18° *die Maii*, 1837.

MEMBERS PRESENT:

Mr. H. Elphinstone.	Lord Hotham.
Mr. Estcourt.	Mr. Ross.

MR. HAWES, IN THE CHAIR.

James Traill, Esq., called in; and Examined.

James Traill, Esq.

18 May 1837.

808. *Chairman.*] YOU have prepared some clauses, with a view to carry out the alterations you recommended in the Police Act; will you have the goodness to lay them before the Committee, together with such observations as occur to you?—There are a good many clauses that I have prepared, but I do not think they are all equally necessary; and therefore, in suggesting them to the Committee, I give them merely as my idea of improvements in the Act. The first clause that I should suggest, would be a power to police constables to apprehend without warrant in cases of misdemeanor, where the party is liable to be indicted for a misdemeanor, or where he is liable to be punished summarily and committed to prison by a magistrate; as the law now stands, the constable cannot apprehend without a warrant for a misdemeanor, but a great number of misdemeanors are committed by persons whom, if you wait for a warrant, you must necessarily allow to escape; for instance, persons passing bad money. In all those cases it would be desirable, if the constable who was not acquainted with the person or residence of the individual, had the power to detain him and have him brought before a magistrate. This clause will also contain power for the purpose of enabling police constables to interfere more effectually with regard to brothels, and gambling-houses and unlicensed theatres, and to take up persons found there without any lawful cause, and to bring them before a magistrate. The next clause which I should propose to be introduced, is a clause for the purpose of enabling a justice of police to punish persons who shall be found in such brothels, or gambling-houses, or theatres, without any lawful cause, and also to fine persons who keep them, or who let them for the purpose of being used in the way mentioned; it is very desirable to have a power of punishing the person who lets the house, for that is very commonly the only person whom you can lay hold of. The next clause that I should propose, gives a power to take recognizance at the station-house

house in all charges of petty misdemeanors; that power already exists in the Metropolitan Police Act, but is not put into execution, and I think that it ought to be. The clause would also authorize the police constable on duty, when a charge for felony or a transportable misdemeanor is brought before him, to require the party making the charge to enter into his recognizance to appear before the magistrate, and if he refused to do so, the constable should have the power to accept of the recognizance of the party charged, and to discharge him, the presumption being, that there was no foundation for the charge, otherwise the person making it would be prepared to appear and prosecute before the magistrate; and the clause would also contain a power to estreat such recognizances. The next clause would be to give a power to commit to hard labour, in default of payment of fines for assaults on police constables; at present the commitment can only be to the gaol. The next clause is one of very grave importance, and about which, I believe, there is a considerable doubt, as to the expediency of the power which it gives, namely for police justices to hear and determine charges of simple larceny; I have not been able to give a proper definition of simple larceny, therefore I have defined it by reference to the Central Criminal Court Bill, which excludes from the jurisdiction of the sessions certain offences, and in regard to larceny, all offences that are not of the nature of simple larceny, so that by reference to that clause, you will have exactly the species of offence of simple larceny in which I should give a summary jurisdiction to magistrates, in this district. This clause will also contain a very important proviso, namely, that before entering upon any case of felony of this description, the magistrate shall put the question to the party charged, whether he chooses to be tried by his summary jurisdiction, or to be sent for trial before a jury; it is important to put that question in the first instance, because, if after he has made the inquiry the inclination of his mind shall appear to the prisoner to be against him, he will prefer having the other chance; but if the question being put to him in the first instance, and the alternative of the punishment stated to him, he prefers being tried by the magistrate, or chooses to plead guilty upon hearing the charge stated, I do not see any encroachment upon his personal liberty or privileges, or in any way whatever that the public interests could be affected. If this power is given to the magistrate, he should also have power to certify his conviction, so that it may be given in evidence upon a subsequent conviction for felony, for the purpose of aggravating that second offence. The next clause contains a power to police justices to order juvenile offenders, under a certain age, whenever he has power to commit them, instead of committing them, to order them to be whipped and discharged, to prevent the injury which arises from any incarceration in such places as we have, under the name of houses of correction. The next clause contains a power to the justice to punish persons indecently exposing their persons within certain distances of public ways or private dwelling-houses, principally referring to cases of persons bathing so near such places as to be acts of indecency.

809. Is there not ample power at present?—There is no summary power; cases of bathing in the river Thames we have to deal with; it is an indictable offence; but that does not remedy the evil of persons going out in a boat, for instance, and jumping from it into the river.

810. Between what hours would you prohibit bathing?—Between six o'clock in the morning and eight o'clock in the evening.

811. Do not you think it would be quite sufficient if parties were forbidden to bathe after eight o'clock in the morning, and again in the evening were not allowed to bathe till after nine, from Lady-day to Michaelmas-day?—Yes; that is a matter of detail; it might be desirable to give every facility to the public to resort to the river for bathing, at the same time limiting it in such a way as not to trespass upon the rights of the public in other respects, or of private individuals. The next clause contains a power to justices of police to punish persons who are guilty of insulting language and behaviour to other persons, tending to a breach of the peace; this I think a very important matter, particularly in low neighbourhoods, for nine out of ten of the assaults arise from those sort of insults in the first instance, and I find that in the Liverpool-street Act there is a similar provision, and that seems to me to be a very good Act; indeed, I have adopted the idea from that; I think it would tend to prevent many breaches of the peace if magistrates were empowered to interfere summarily and check the cause of the breaches of the peace. The next clause would confer a power upon justices of police to order the delivery of goods stolen or fraudulently obtained, and in the possession of brokers

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brokers and other dealers in second-hand property, either upon payment of such sum as the justice might think fit, or without payment altogether, such persons being liable to a stricter rule of law, as they afford greater facilities for parting with stolen property than any other dealers; these are matters more particularly connected with police; but I think that in the re-enactment of this Act of Parliament it would be very desirable to consider whether a jurisdiction which seems to be extremely wanted might not be conferred upon those offices, namely, a jurisdiction in matters of small private injury or wrong; at present, if a man has any cause of complaint which it is not worth his while, or which he has not the means, to make the subject of an action at law, and so to spend 15*l.* or 20*l.* in getting redress for a matter, say of 5*l.*, all such cases are entirely without redress, and the applications that we have daily on such subjects are extremely numerous and of the most urgent nature: The first of these clauses would be to give power to magistrates to decide matters where the question is as to the excessive or irregular proceedings of the landlord or his broker with regard to petty distresses of tenants held at weekly or monthly rents, or under a certain amount of rent. The next clause would give a power to order compensation to the landlord for wilful damage done by the tenant during his tenancy; in such cases the Wilful Damage Act is held not to apply to cases of tenants, and therefore in such cases, though the damage may be ever so wilful, the landlord is without redress, unless he can afford to bring an action, and perhaps the amount of damage may not exceed half-a-dozen shillings. The next clause would give a power to justices of police in the same class of cases, disputes between small landlords and tenants, to order the delivery of possession of houses held at such weekly or monthly rents, after due notice to quit. That is also a great source of vexation in low neighbourhoods like ours. Houses are of little or no value; yet the tenants knowing that the landlord cannot eject them, remain occupants without paying any rent, and probably set fire to the property or pull the place to pieces. The next clause gives the power to justices of police to order delivery of the goods to the owner, when they have been unlawfully detained from him without any legal claim, or if there were any legal claim, to give a power to a justice to ascertain the amount of that claim, and to order the case to be settled by the payment of it, and the goods to be delivered; this is in the nature of a summary remedy in cases of detenue, and is very imperatively wanted; we find that there is the greatest ingenuity constantly resorted to, to try to get our jurisdiction to take effect upon such cases. I heard a case yesterday which was taken under the Pawnbrokers' Act: a woman had given a tailor some clothes to make for her boy, but he had made them in such a way that she thought she was not called upon to pay the full amount of his charge; he, taking the law into his own hands, went and pawned them, and it was in consequence of his having committed an offence that my jurisdiction arose; and for the amount of 3*s.*, to the perfect satisfaction of both parties, this matter was decided; whereas, had it been left to an action at law, which was in fact the only remedy, at least ten times as many pounds might, very satisfactorily to the lawyers, have been spent.

812. And with as much satisfaction to the ends of justice?—With more satisfaction to the ends of justice, for both parties were perfectly satisfied with the decision. The next clause would give a power to justices of police to settle disputes between masters and servants employed in domestic service, or in other capacities, in which the salary was not above a certain amount, say 50*l.* or 60*l.* a year.

813. That is, in fact, only extending the power of an Act which exists with reference to agricultural servants, to domestic servants?—Exactly. Many of these clauses are merely extensions of the law as it now stands, providing for cases which are in *pari passu*, with cases which have been provided for; and the circumstance that Acts have been passed to provide for some cases of special grievance shows that the legislature were aware of the existence of the grievance, but did not think proper to provide for other cases of existing grievance, not being perhaps called upon at the time to do so. The next clause is one which provides for a subject of complaint that is of very common occurrence, particularly in the summer season, namely, the injury that arises from the bites of dogs, whether supposed to be mad or not. If a man is bitten by a dog, he has no remedy, except by an action at law against the owner of the dog, and then he can only recover damages, by proving that, to the knowledge of the owner, the dog had been given to bite. Now, I do not see any reason why a man who has a dog should not be bound to see that it does not do any mischief to his neighbour, or if it does

do

do mischief, why he should not be, to a certain extent, liable to make compensation for it. It also inflicts a fine upon persons suffering dogs to be at large under circumstances when they ought not to be so. The next is a clause merely as to the mode of levying sums which are forfeited, or ordered to be paid. The next clause is for the purpose of enabling justices of police to allow the costs of parties who are brought before them upon charges or complaints in which no warrant or summons has issued. By the general Act of the 18th of George the Third, the Act which enables justices in petty sessions to allow the costs of parties, it is necessary that a summons or warrant should issue, which of course may not apply to cases of charges where there have been no such summonses or warrants. It seems reasonable that the law should be assimilated in both cases, and there is no doubt that such a provision would have been made, if this mode of bringing matters before a justice had existed at the time of the passing of that Act. The next is a clause to enable justices to mitigate all penalties to any amount of mitigation, and to reduce the informer's share to any amount that he pleases, except in customs, excise and stamp cases. The object of this clause is to put the trade of the common informer under the control of the magistrate in such a way, that if he finds that a man is making an improper use of the privilege which the law gives him of laying a common information, it shall be in the magistrate's power to take away the motive to that by reducing the penalty in such a way as he thinks fit; unless you give the magistrate the power to mitigate the penalty also as against the party, you still leave a secret means of carrying on the informer's trade, because he lays his information for such an offence as secures a limited penalty, as for instance, 10*l.*, and though he knows the magistrate will give him little or no share of the penalty, yet he goes to the person that he lays the information against and says, "You know you must be convicted for the amount of 10*l.*, and though I can get nothing from the magistrate, it is better for you to settle with me for something less than 10*l.*," and it is the constant practice in that way to have those matters compounded by informers behind the magistrate's back. The last clause which I should suggest would be one to give the justice of police the power of ordering delivery of possession of all goods which are in the hands of the police constable, having been taken upon a warrant or upon a charge of felony, or of their having been fraudulently obtained, when such charge has been disposed of under circumstances that a writ of restitution cannot be had; it frequently happens that goods are in the hands of the constable when the thief is acquitted or when he cannot be found, or when there has been no bill of indictment either presented or found against him for those particular goods; in that case there is no means of obtaining a writ of restitution, and the constable is left in the awkward predicament of being liable to an action by two parties; this is a situation in which he ought not to be placed in the performance of his duty, and there seems to be no hardship to either party in giving the magistrate the right to say, "I shall not determine the right of property, but as between two parties, I think such a one is entitled to possession;" leaving the other party to establish his right to the property by an action at law. These suggestions are thrown out more with a view for the consideration of the Committee than with the idea they will all be received favourably; but they have all proceeded from the experience of the greater or less inconvenience which we have felt at our office; and I have discussed the matter with my colleagues, and they all concur with me in thinking that these clauses are unexceptionable, and that many of them are extremely necessary and ought not to be overlooked in any improvement that is likely to take place.

814. Both your colleagues are members of the bar?—Yes; one of them, Mr. Jeremy has had long experience at the bar, I think 18 years.

815. Assuming that the extended jurisdiction which you have spoken of in your evidence was carried into practice, do you not think that the clerks of the magistrates should receive some augmentation of their salaries?—I think that the clerk's situation, I judge from our own office principally, considering its great responsibility and great labour, is very inadequately paid; I took the trouble to inquire the quantity of duty done by our clerks, and it would surprise the Committee if I were to state the number of hours that they are called upon to work daily, and the importance of their business; our second clerk, a very intelligent young man, received 130*l.* a year for that duty, and the duty of a clerk at one of those offices requires almost as great legal knowledge as the duty of the magistrate; for in the great multiplicity of affairs that come before the magistrate, he is dependent upon the accuracy of the clerk, not merely his clerical accuracy, but the

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accuracy of his legal knowledge, for avoiding continually falling into errors himself; that is to say, in regard to his commitments and the other formal proceedings of his office; the slightest blunder in one of the commitments signed by the magistrate, renders the magistrate liable to an action, and therefore it is of the utmost importance to the magistrate and to the public that the clerks should be persons well qualified, and therefore sufficiently paid.

816. Do you wish to make any observations upon the office constables?—I stated on a former day, that I thought it was of the utmost importance that the Metropolitan Police should be established in its full efficiency, and that for that purpose all the processes of every kind whatever, civil and criminal, should pass through their hands; if that were the case, of course the change would affect the emoluments of the officers who now perform that duty, and as I believe they are universally, (I know that in our own office they are, without any exception,) highly respectable and useful men, I should be very sorry to advocate any change by which their interests would be affected, without at the same time pointing out the necessity of attending to them; I believe they would consent to a diminution of their present profits, upon being released from this duty. In looking over my evidence, I seem to have received the idea of an increase of the salary of the police magistrates, with great complacency, I did not mean to express the opinion, that we are entitled to a higher consideration; I was only speaking in general terms as to the advantage there was in giving those appointments as much credit as you could do, by means of money or any other means, and I think it would be out of the question, raising the salaries of the police magistrates, whilst the Commissioners, who perform a much more arduous duty, are limited to 800*l.* a year.

817. In your previous examination, you expressed your opinion upon the dispensing with a jury altogether in cases of simple larceny, precisely those cases over which you would extend the summary jurisdiction of magistrates; have you any further observations which you wish to make upon that subject?—I have observed that there has been a suggestion repeatedly made, of the expediency of having a smaller jury of five or seven, *de circumstantibus*; I think that would be attended with no particular good, and be productive of considerable delay in the transaction of the business of the police office; if the jury were of that description of persons, it would be in all probability under the influence of the magistrates, if there were no counsel, and if there were counsel, it would be under the influence of the counsel; in one case it would be useless, and in the other it would be mischievous.

818. When you speak of a jury *de circumstantibus*, you do not mean that it would be possible in a police office to obtain a jury from those that were present?—We should get *circumstantes* for the purpose, as is the case at Guildhall, where persons go for the purpose of being put on the jury; I think that whatever jurisdiction you give to justices should rest upon their sole responsibility, and should be measured by their individual or professional competency; and in giving a criminal jurisdiction, it is impossible not to observe that the effect may be to increase the inconvenience which magistrates, I believe, in London, generally feel now, namely, that constituted as our places of correction and discipline are, the magistrate finds he has more cases to dispose of already, of persons convicted by him, than he knows how to dispose of with advantage either to the parties themselves or to the public.

John Buckle, Esq., called in; and Examined.

John Buckle, Esq.

819. *Chairman.*] YOU are the Recorder of Worcester?—I am.

820. And the author of a recent work on prison discipline, entitled "A Charge to the Grand Jury of Worcester?"—I am.

821. Can you state to the Committee generally the number of prisoners tried before you at each sessions?—The number has varied from 10 to 24 during the last year; generally speaking, there are more prisoners at the Michaelmas sessions than at any other.

822. The calendar specifies the offences for which the prisoners are tried, does it not?—It specifies the offences generally, as offences of felony, and whether the stealing is from the person or from a dwelling-house.

823. What description of offence is that which is most frequently tried before you?—Simple larceny there, and indeed at all sessions.

824. Do you find generally that there is any difficulty in the proof of the facts, or have you any reason to doubt the guilt of the party?—Generally speaking, in cases

cases of simple larceny, the proof is of the most simple character, and the Committee will, perhaps, best understand the nature of the proof by hearing the questions usually submitted to juries: where the proof is direct, which is not uncommon, the question which usually goes to the jury is, as to the identity of the prisoner; where the proof is circumstantial, it generally consists in this—the stolen property is found in the possession of the prisoner very soon after the larceny, and he gives no satisfactory account of it. In those cases, the usual question submitted to the jury is, whether they are satisfied with the account given by the prisoner, who has commonly some story or other; not unfrequently the question submitted to them is as to the identity of the property. These are the ordinary cases, I will not say what proportion they bear to the whole, but a very large proportion.

825. Are there generally any new facts brought out at the trial, beyond those upon the depositions?—Usually not; none that are material.

826. Then it may be inferred that the first commitment is generally confirmed by the subsequent conviction?—That is the ordinary case; I am still speaking of simple larcenies, and, of course, the Committee will understand that when I speak of those cases as being general, I am not confining myself to the sessions at Worcester, but am speaking in reference to what I have observed at other sessions.

827. You practise at other sessions?—I practised at the Surrey sessions before I was Recorder of Worcester; I attended them for some years.

828. As the law now stands, a magistrate is bound to commit if there is a *primâ facie* case of guilt made out, is he not; that is a case to go to the jury?—I should consider that my duty, as a magistrate.

829. Do you not think that hence many commitments may take place, it being in the mind of the magistrate that there is a subsequent investigation, which would not take place, were he deciding upon his own responsibility, and obliged therefore to hear both sides in the first instance?—I think the proof of that is, that a number of persons committed by the magistrates, after remaining in prison for several weeks, or, in the country, for two or three months, are acquitted at the sessions; and I do not see any reason why, upon a fuller investigation in the first instance, they should not have been acquitted at once. Then the evil arising from the delay is obvious enough, that a number of innocent persons are committed to prison, and there exposed to all the contamination of the prison, in London for weeks, and in the country sometimes for months, before the question of their innocence is determined.

830. You are disposed, therefore, to place great stress upon the importance of the first inquiry?—Undoubtedly.

831. Do you think that there would be any objection to giving properly qualified and stipendiary magistrates summary jurisdiction in all cases of simple larceny, keeping in mind the prejudice which exists in the public mind in favour of a trial by jury?—On the contrary, if the magistrates are well selected, I can see every possible advantage from it; the whole would turn upon the selection of the magistrates. If they were selected for the soundness of their judgment, competent legal knowledge, and the other qualities that are necessary in a magistrate, every possible advantage would result from it.

832. Do you think that the public mind would be so well satisfied with the decision of a magistrate, as they would be with the decision of a magistrate backed by the verdict of a jury?—It is always difficult to know what would satisfy the public; I should be disposed to say, if the public were left to their own judgment, the question not being taken up for agitation, that they would be so, and that they would see, very soon after the thing was brought into operation, all the advantages which were gained by it, and all the inconveniences which were avoided; but I can easily conceive, that if the question were taken up as a question to be agitated, and the constitutional functions of a jury were insisted upon as a thing necessary for the liberties of Englishmen, and topics of that nature forcibly urged, that some public dissatisfaction would arise, and that such dissatisfaction would oppose great difficulties.

833. You are aware that the Commissioners on the Criminal Law in their Third Report, have expressed opinions very similar to yours with regard to the summary jurisdiction of the magistrates; they state, "In considering the simplicity of the offences in question, and the trivial nature of the circumstances on which they generally depend, we can discover no great or peculiar advantage to offenders or the public, in investigating them by a jury; and on the other hand,

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both the offender and the public derive an important and undeniable advantage, by the adoption of a course with which the trial by jury is inconsistent;" in that opinion you generally concur?—In the great majority of instances of simple larceny, and indeed I should not confine my observation to those cases, I can see no use whatever in a jury; and I can see the greatest possible advantage in summary jurisdiction being exercised by the magistrate: in the first place, under the present system there is unnecessary delay in the administration of justice, unnecessary delay in determining the guilt or innocence of the party, and I say unnecessary, because from the nature of the proofs given at the sessions, I can see no reason whatever why the question should not be determined by the magistrate in the first instance; I speak of the usual cases, and for the extraordinary ones I would suggest a special provision. Then, besides the delay, there is unnecessary vexation; vexation thrown as well upon the witnesses as upon the prosecutor, by compelling them to appear first before the magistrate, perhaps a second or a third time before the magistrate, then before the grand jury, then at the sessions, and perhaps day after day at the sessions, where they may be detained the greater part of a week, while the case might as well have been disposed of in the first instance by the magistrate, as it appears to me. Then besides unnecessary delay and unnecessary vexation, I should say there is unnecessary expense, the expense of prosecution at the sessions; but that which I should urge as the most important of all, is the manifest injustice that is done to the prisoner, in confining him for weeks or months before you determine the question of his guilt or innocence.

834. It has been suggested, that in order to meet that difficulty a jury should be empannelled in the first instance and be a part of the first investigation in the police office; what would be your opinion as to the value of trial by jury in that case?—In that case many of the evils that I have alluded to would be avoided, and I think it would be a great improvement upon the present system, but for the reasons I have already stated, I should object to it, because I think it would be a cumbersome and unnecessary machinery; I have already stated to the Committee the questions which are usually submitted to juries; in those cases of simple larceny where the evidence is direct, the question is the identity of the prisoner; where the evidence is circumstantial it is usually, has he given a satisfactory account of the possession of the goods; now I apprehend that any sensible man accustomed to such investigations, as one who has received a legal education necessarily is, would at once arrive at the right conclusion in such cases, and that no two sensible men would differ; but certainly we find, and if the Committee are familiar with the working of the sessions machinery, they are well aware, that a jury will sometimes acquit where the guilt is obvious enough, and where at the bar there is no difference of opinion upon the subject, the counsel who has obtained the acquittal being not a little surprised at the verdict he has obtained. The Committee will easily understand how ingenuity may be employed upon all questions of identity; sensible men, conversant with judicial inquiries, would not be misled by that; the ingenuity would not affect them, but a jury certainly is apt to be carried away by such ingenuity, whether displayed as to the identity of the prisoner or the identity of the property, and not unfrequently there is an extraordinary acquittal; and again, with regard to the other question, of accounting for the possession, the natural and legal presumption arising from it is not unfrequently thrown aside by the jury in consequence of the ingenious arguments of counsel.

835. Mr. *Estcourt.*] Do your observations apply to stipendiary magistrates, within the metropolis, or are they applicable to magistrates in general?—I should say that they are applicable to magistrates in general, without any exception of the metropolis.

836. *Chairman.*] Do not you think the present system of trying the criminal for such petty offences tends rather to diminish the horror of crimes of magnitude, both being tried with precisely the same formalities, both being tried with the same solemnity, and particularly with reference to juvenile offenders?—I am not prepared to give any opinion upon that point; if I could see that, in the case of petty offences, the advantages of such trials preponderated over the disadvantages, it would appear to me to be no objection that the procedure was the same; it is because I see great disadvantages without any corresponding advantages that I should recommend a simplification of the procedure: with regard to the more important offences to which the question alludes, very different questions arise for the jury; there are questions of intention and questions of malice; the Committee

mittee will at once see that they are of a totally different character from those to which I have before alluded; and not only are there more difficult questions of fact, but legal questions will frequently arise which do not often arise in cases of simple larceny; occasionally, however, they do arise, even with regard to the most petty offences, and for those I would provide; supposing summary jurisdiction were given to the police magistrates over that class of offences, then I should make a special provision for difficulties of law and for difficulties of fact, which might arise even in those cases.

837. Can you explain to the Committee at the present moment those provisions to which you have alluded?—There may be two classes of difficulty, there may be questions of fact and questions of law; now, with regard to the questions of fact, I should follow the provision which is made in the Acts known as Sir Robert Peel's Acts, leaving it entirely to the discretion of the police magistrate, whether he would send the case to the sessions or not. It seems to me that the object which the Committee has in view would be fully answered by such an arrangement; because in the great majority of instances, where the evidence is of a simple character the case would be at once disposed of, and in the few instances which form the exceptions the magistrate would be glad to avoid the responsibility of determining them, and would send them to the sessions; being sent to the sessions they would be submitted to a jury; and just in those cases where it appears most desirable that the question should be submitted to the jury, it would be submitted to the jury; I mean where a conclusion is to be arrived at, from a number of facts somewhat complicated in their nature.

838. Would you leave the power of referring such cases, entirely in the breast of the magistrate?—Entirely; I would not interfere with his discretion at all; I should just follow the provision in Sir Robert Peel's Acts, where he has given a summary jurisdiction in certain cases, leaving it to the magistrates to determine whether the case should go to the sessions or not; whether he will exercise that jurisdiction or not.

839. In those cases in which some difficulties arise as to the law, what would you recommend?—With regard to the difficulties of law, and such difficulties may undoubtedly arise, even in cases of simple larceny, and questions of considerable difficulty, I would give to the police magistrates the same power which it is proposed to give to recorders in a bill that is now passing through Parliament; I would give them a power to obtain the opinion of a judge upon the question of law submitted to him; precisely the same power which the bill in question proposes to give to recorders.

840. Mr. *Estcourt*.] Do you consider that this arrangement which you have suggested is adapted for the practice of magistrates generally, who are not supposed to be learned in the law?—Yes, indeed I do, supposing always a competent legal knowledge; I do not mean to say that any considerable legal knowledge is necessary for them; but I am supposing that degree of legal knowledge which is necessarily acquired after a few years practice at the bar, or even at the sessions; the most important feature in it is a habit of legal investigation.

841. You do not think it would be dangerous to entrust magistrates generally with the power which you now propose to give to the police magistrates?—I am not aware of any danger that would result from entrusting all magistrates with such a power; but I can see peculiar advantages in first entrusting the police magistrates of London, so selected, with such a power; there would, in that way, be an opportunity of seeing how the machinery worked, and it would be brought into play under the most advantageous circumstances; I am not aware that any evil has resulted from the provision that is made in Sir Robert Peel's Acts, to which I have before alluded, which is of a similar character; if a person is found in the possession of venison, and he cannot give any satisfactory account of it to the magistrate, the magistrate is empowered to exercise a summary jurisdiction; now it is precisely of the same character, because, as I have before said, the usual evidence in cases of simple larceny consists of the prisoner being found in possession of the property soon after the larceny, and he gives no satisfactory account.

842. *Chairman*.] The Commissioners, whose report has been referred to, limit the summary jurisdiction that they propose to confer, to property of a certain value, and also to parties of a certain age; what is your opinion as to the limitation that they have there introduced as to value and age?—I see no advantage whatever in either qualification. With regard to the age, there is this inconvenience, there will be a collateral inquiry as to whether a person is within that age or not; and

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suppose he is not, I can see no corresponding advantage in excluding the jurisdiction. If the object is to provide for the cases of juvenile offenders, then it appears to me quite sufficient to select that class of offences usually committed by such offenders. If that is not the object; if the object has no immediate reference to juvenile offenders, then, surely, age has nothing at all to do with it. Then, with regard to value, I should say that I see no possible use in the qualification; the evidence is the same, whether the value is one thing or another, and the man who is competent to draw a right conclusion from the evidence in one case, is equally competent in the other, whatever the sum may be; and I think it very important to avoid all those collateral inquiries with regard to age or value which might occupy no inconsiderable part of the time of the magistrate during the inquiry.

843. The Commissioners appear to have founded their limitation upon the difficulty which they experienced in defining, with accuracy, the particular class of thefts that should become the subject of summary conviction and punishment; do you think that confining the summary jurisdiction to all cases of simple larceny would meet that difficulty satisfactorily?—I should apprehend that if you take cases of simple larceny, you will include the greater number of juvenile offenders, at least that would be the case in the country; but in London, where pocket-picking is a very common thing, it would be necessary to include another class of offences. The Committee, no doubt, are aware that stealing from the person is not included in the definition of simple larceny. I can see no possible objection to extend the jurisdiction to cases of stealing from the person, where there is no force or violence whatever, at the same time limiting the punishment; I say limiting the punishment, because the Committee would, no doubt, consider it a great objection that a police magistrate should have the power of transporting for life, and it would be necessary to limit the punishment, in order to take away that power, which is the highest punishment annexed by law to the offence of stealing from the person; but I see no difficulty in introducing that limitation. You might, for instance, make a proviso that no punishment should be inflicted by a magistrate exceeding the punishment in the case of simple larceny; and the effect of that would be, I apprehend, that whenever the magistrate considered that such punishment would not be sufficient to meet the case in question, he would send the case to the sessions.

844. Just, in point of fact, as they now do in cases of aggravated assault?—Just so.

845. Then, with reference to the crimes in the metropolis, which you would bring under the summary jurisdiction of magistrates, you would define them to be acts of larceny, altogether unattended with violence of any kind?—No; that is not what I have proposed. I have proposed to limit the summary jurisdiction to cases of simple larceny, and cases of stealing from the person unaccompanied by any violence; there are other cases of compound larceny, and I do not propose that any summary jurisdiction over those offences should be given to the magistrate.

846. You would limit summary jurisdiction entirely to cases of simple larceny and to cases of stealing from the person unaccompanied by violence?—Exactly.

847. And you give that opinion at present, with reference to the police of the metropolis?—Yes.

848. Would you express a similar opinion as to the expediency of extending such a plan to great towns where there were properly qualified stipendiary magistrates?—Yes, where there were properly qualified magistrates; I should consider that a necessary condition precedent.

849. With reference to this jurisdiction, would you give it to a single magistrate?—Undoubtedly to a single magistrate; I can see no advantage in giving it to two, and many advantages in the undivided responsibility of one; I have only spoken of cases of simple larceny and of stealing from the person; but with regard to misdemeanors, it appears to me very desirable that the magistrates should have an extended jurisdiction, especially with regard to the amount of the fines they can impose. We see instances, frequently, of the most aggravated assaults which are carried before a police magistrate and disposed of, and a fine of 5*l.* is the punishment; in the last year I have seen cases of assaults accompanied with the most aggravated circumstances, and the fine has been 5*l.*; that is the extent of punishment; it appears to me, that it would be better that they should have no power at all, than that they should have a power so limited as that.

850. Mr.

850. Mr. *Ross.*] The magistrates may send the case to the sessions, may they not?—They may; but if the Committee will give me leave, I will make one observation upon that. I do not know a greater proof of the vexation that belongs to the present procedure, than is to be found in the circumstance of their not sending such cases to sessions; it is almost invariably in consequence of an application from the party aggrieved, that the case is not sent to the sessions; it is felt that, first the delay and then the vexation of going before the grand jury, and being kept day after day at the sessions, and going through the ordeal of the sessions inquiry are so great, that the offended party applies to the magistrate, begging him to decide the case, and the magistrate accedes to the request, and so the case does not go to the sessions. Upon this point the police magistrates can give much more satisfactory information, but I believe that is so. A much greater power of fining is already given to the magistrates in other cases, by Sir Robert Peel's Acts; in those cases of assault to which I have alluded, the power of the magistrate is limited to 5*l.*, in other cases you find it extended to 20*l.*

851. In what cases is it extended to 20 *l.*?—In cases of dog stealing; now certainly an assault may be committed under such circumstances that the offence is far greater than stealing a dog. In the case of venison, to which I have before alluded, a single magistrate has the power of fining 20 *l.* In the case of stealing trees, it is limited to 5 *l.*, that is for the first offence; for the second offence, the power is extended to 12 months' imprisonment. In the case of stealing fences, and so on, it is the same; it is the same with regard to receivers. Again, in the case of stealing fruit from gardens they may fine 20 *l.*, so that it would not be giving them any increased power, as far as the amount is concerned, if the power of fining were extended to 20 *l.*

852. *Chairman.*] Provided the power of single magistrates was extended over the offences which you have described, would it not be desirable that the ordinary consequences of forfeiture and disqualification upon trial by a jury should take place upon a summary conviction?—It appears to me desirable that all the legal consequences of an offence should take place upon a summary conviction, in the same way as if it had been tried by a jury, and, of course, among others, that the certificate or the record should be conclusive evidence in a case either of an indictment or of a second charge before a magistrate. I would just add, with regard to the present question, that it appears to me that if the jurisdiction were extended in the manner suggested, it would be as well to make the court of the magistrate a court of record; I can see no objection to that, and I can see no reason why magistrates should be called upon to return the depositions or any other documents to the sessions.

853. Mr. *Estcourt.*] Your observation applies to the practice of the police magistrates?—I believe the police magistrates always return the depositions to the sessions.

854. Would you make a court of a single justice, acting in the country and in his own house, a court of record?—I was referring only to the police magistrates.

855. Mr. *Ross.*] Do you mean that the police magistrates return the evidence in cases of summary convictions, to the sessions?—If the power of summary conviction is extended to those offences, then I see no reason why magistrates should return the depositions to the sessions.

856. Do magistrates return depositions, in cases which are not to come before the sessions or assizes, to the clerk of the peace?—No, I believe not the depositions, unless the case goes to the sessions; but then the object of my suggestion is this, that the convictions themselves should be preserved as records in their court, and that the court should have all the privileges of a court of record; the power, for instance, of committal for a contempt, which it appears to me very desirable that the magistrates should possess.

857. *Chairman.*] In the Municipal Act the recorders are prohibited from acting as justices within the borough?—I am not aware that they are.

858. As the law at present stands, the committing magistrate may afterwards be the magistrate before whom the final adjudication of the case at quarter sessions is brought?—He may be one of the magistrates before whom the final adjudication takes place.

859. As a petty sessions is constituted by the presence of two magistrates, two magistrates may also preside in quarter sessions, and hence the two committing magistrates may be the magistrates who shall finally adjudicate; do you think it desirable that the magistrate who originates the inquiry into the prisoner's guilt,

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or before whom the facts are brought in the first instance, and who may have to give directions for the collecting of evidence and the shaping of the case, should be the person before whom the prisoner is brought for his final trial?—No, I should say not.

860. You are of opinion that there should be a separation of the two duties, and that the duty of inquiring, in the first instance, or the detection of crime, should be separated and distinct from the duty of adjudicating upon crime?—That is my opinion; but I have no personal observations to offer to the Committee upon that subject.

861. In cases where there is a well organized constabulary force existing in the seat of crime, would it not be desirable that the whole executive duty should be entrusted to them, and where there is a properly qualified magistracy, that they, on the other hand, should be confined strictly to judicial duties?—I should say undoubtedly, for this simple reason, that it is advisable to separate the judicial from the executive power; that is a principle which is generally admitted, and I do not see why it should not be true in this instance.

862. Mr. *Ross.*] Is this salary of 800*l.*, in your opinion, such as would command efficient talent from the bar to perform those executive duties?—Undoubtedly not.

863. *Chairman.*] If this extended jurisdiction were conferred upon the police magistracy, would it not be desirable to secure the best talent that could be procured?—Eight hundred pounds, in my opinion, certainly would not command it, nor would it command the abilities that would be required of police magistrates, with this extended jurisdiction.

864. Mr. *Elphinstone.*] In your opinion, what would be an adequate remuneration for a police magistrate?—I think that would depend upon the constitution of his court; supposing this extended jurisdiction to take place, and the court were made a court of record, a less salary would be sufficient than would otherwise be sufficient; I have no means of giving a further answer to the question beyond what was suggested to me by observations I made last year, when it was proposed to have a court of revising barristers; the salary then suggested was 1,000*l.* to 1,200*l.* a year, and certainly there were great difficulties in finding qualified persons disposed to leave the bar for such a salary. If I were to mention any specific sum, I should say that about 1,500*l.* a year would be sufficient to command ample talents for the purpose; great legal talents you cannot expect, nor do you want them; but it would enable you to select from that class of persons to whom it would be desirable to intrust such power, I mean persons who have received the education of gentlemen, and have had sufficient experience at the bar to have given them competent legal knowledge and habits of legal investigation.

865. *Chairman.*] In fact, men who by station and ability would obtain the respect of the public to their decisions?—Yes.

866. Do you think it at all desirable to retain the qualification now requisite for a police magistrate?—I can see no advantage; the Committee are aware that it is not necessary in the case of a recorder.

867. You have alluded to the mode in which business might be conducted in police offices; are you of opinion that there would be any advantage to the public in constructing them more as courts, and conducting their proceedings more like the proceedings of the superior courts?—I should say not only an advantage, but, supposing you give them so extended a jurisdiction, that it would become absolutely necessary; if you separated the judicial from the executive in the manner proposed, throwing upon the Commissioners of police all that belongs to the executive, all that which is preliminary to the judicial inquiry, I should apprehend that it would be advisable and necessary to make them regular courts, and to give them the form as well as the substance of courts.

868. And you would require that the bar dress should be worn by the presiding magistrate?—From the observations which I have made in the country, I should say that the bar dress produces an effect.

869. Does not it also produce some degree of effect upon the mind of the judge, as well as upon the mind of the public with reference to the judge?—That must depend upon the constitution of men's minds; upon some it would produce no effect whatever, upon others it might; but the effect upon the uneducated public is that which I speak of.

870. Supposing

870. Supposing this summary jurisdiction to be conferred, what punishment would you propose to annex to the offences in question, namely, to acts of simple larceny or stealing from the person without violence?—If the police magistrates are selected from the class of persons to which we have before referred, I can offer no reason why they should not be entrusted with the same power of punishment, in cases of simple larceny, as is given to the recorders of boroughs; and in cases of stealing from the person, I would confine it to the same punishment; I would say, that if it appears to the magistrate that the punishment is not sufficient, he should send the case to the sessions, and that, not because I see any very reasonable fear in entrusting him with the further powers entrusted to the recorder, but in the commencement of a new system it is desirable not to go too far; and it is already extending the power very considerably, giving the power of transportation for seven years, and the power of imprisonment for two.

871. Would you give the magistrate exercising summary jurisdiction, power to transport for seven years, or imprison for a period so long as two years?—I repeat that I can see no valid objection to entrusting them with such a power, supposing them to be selected in the manner suggested, because I can see no reason why a magistrate so selected should not be as capable of exercising the power as a recorder of a borough.

872. In the case of the recorder, he has a jury present to sanction the verdict of guilty?— But the jury has nothing whatever to do with the measure of punishment; that is entirely in the breast of the recorder; and I believe that when the jury take into their consideration the punishment of the offence, they generally return a wrong verdict. This is a matter which I have frequently talked over with members of my own profession, and I believe there can be little difference of opinion about it.

873. In a trial at quarter sessions does not the question of the value of the trial by jury arise in this way, namely, that though the amount of punishment is in the breast of the recorder, the verdict of guilty, which is brought in by the jury, is brought in with the full knowledge that it subjects the prisoner to the maximum of punishment?—It subjects the prisoner to the maximum of punishment, and when the jury think the maximum of punishment too great, and also think that the maximum may be applied in the present instance, they will frequently acquit, although the guilt is apparent to every sensible man present. That I consider, a great objection to the jury system. In my own summing up to the jury, having seen that disposition upon many occasions, I consider it my duty to remind them, especially after a speech from counsel, that the measure of punishment is one resting upon my responsibility; that all the circumstances of extenuation will be taken into consideration by me, and I believe that, after a powerful speech from counsel, reminding them of the maximum of the punishment which the law annexes to the offence, unless they believe that no greater punishment will be given after their verdict than they think right, their disposition is to acquit, and frequently they do acquit; now that is an imperfection in the system; for the only legitimate function of the jury is this, to draw a right conclusion from the facts presented; with the question of punishment they have nothing whatever to do; when they take the question of punishment into consideration they usurp the functions of the presiding judge, and I think that ought to be thrown out of consideration altogether when you are determining what the punishment should be in case of summary conviction.

874. Upon the supposition that this summary jurisdiction were carried into practice, you having turned your attention to the subject of prison discipline, do you think there is any adequate provision at present for the punishment of offenders by imprisonment in this country?—I think the answer to that question will be found in the printed reports of the House of Commons, especially the Second Report on Secondary Punishments.

875. You entertain the opinion, in common with many other magistrates, that the effect of the punishment of imprisonment at present, is rather to increase than to diminish crime?—Undoubtedly; and I should attach no little importance to the extension of summary jurisdiction in consequence of that state of things; at present an innocent person is thrown into one of those gaols or houses of correction, kept there for weeks, and, in the country, for months, and then it is determined that he is innocent, and he leaves the gaol, having been exposed to all its contamination, and the consequences naturally follow, those consequences which

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have been traced in the various reports to which I have referred, and more recently urged by the inspectors of prisons.

876. Supposing, however, an objection were raised to dispensing altogether with the trial by jury, do you think it desirable to fall in with the recommendation of the Commissioners on Criminal Law, to have a smaller number as a jury?—I can see no particular virtue in the number 12, but at the same time I can see no very obvious advantage in altering that number; it is the ancient number. As to a jury *de circumstantibus*, I think that would not be desirable; if a jury is to try the matter before a police magistrate, I should think it much better that he should appoint a day for the summoning of the jury, and for the hearing of such cases, and that he should have the benefit of all the jury machinery. In the metropolis, if they were taken *de circumstantibus*, I have no doubt that a number of persons would be in daily attendance for the purpose.

877. You think that there would be no advantage to the public in the mere reduction of the number, but that it would be, in point of fact, rather yielding to the prejudice in favour of trial by jury, than affording any efficient protection?—I can see no advantage in reducing the number; I have already stated that I see no advantage in juries in those cases; but if it is determined to retain juries, I should think it as well to retain the number 12; it must arise entirely from the strongly-rooted feeling in favour of juries, and that feeling is as strongly associated with the number 12, that no man should be convicted but by 12 of his countrymen; but I must observe with reference to that suggestion of a jury of smaller number, that if it were adopted, you would still throw aside the present jury system; you would have no grand jury; therefore you would neither obtain the advantages which I have taken the liberty of urging, nor would you secure the advantage of preserving the constitutional practice. In the first place, you would have no grand jury—

878. You are not perhaps disposed to regret that circumstance?—Certainly not; I should not regret the loss of either, but it appears to me that to take that middle course of retaining the disadvantages attached to the jury system without securing the advantages that now belong to it, I mean the feeling in favour of an old constitutional tribunal, is the very worst course that could be taken; if you do not secure public feeling in its favour, you secure nothing. To me it appears that the institution of the grand jury is utterly useless in such cases, for it amounts, in fact, to this; a man has been imprisoned for a certain time upon a certain charge, and then a grand jury is to determine in secret whether he shall be tried or not; that is the only question for their consideration; and I will also add, that the functions of juries are now essentially distinct from their functions in the olden time, and that the reasons which are so strongly urged in favour of the jury system in our old law books are no longer applicable; they were then always supposed to be persons conversant with the questions submitted to them; they were persons taken from the neighbourhood; they were supposed to be acquainted with the character of the witnesses; they were supposed to have knowledge of their own relative to the facts in question. All these circumstances were supposed to fit them peculiarly for arriving at a right conclusion; but at the present day, so far from that being the case, if a juryman knows any thing of his own knowledge, that juryman must be sworn, and state before his fellow jurymen, in open court, what he knows of his own knowledge, subject to questions.

879. If objections were considered strong to the abolition of trial by jury in the cases mentioned, would there be any advantage in giving the prisoner any right of appeal from such a summary jurisdiction?—It is always desirable to give a right of appeal where it is possible without entailing great inconvenience; I confess I am not prepared to suggest any mode of appealing in such cases which will not be attended with great inconvenience.

880. Mr. *Estcourt.*] Would you give to the prisoner an election whether the case upon which he is charged shall be summarily tried or shall be adjourned to the next gaol delivery?—I would not give an election to the prisoner, but I think it would be much more desirable that the summary jurisdiction should be extended upon that condition than that it should not be extended at all.

881. *Chairman.*] You have alluded to cases of assault which you have scarcely thought sufficiently provided for by the law as it now stands; do you consider it desirable that all assaults should be punishable with hard labour, keeping, however, the alternative of fine and imprisonment?—I should be disposed to give to the

the committing magistrate a discretionary power similar to that given to the chairman at quarter sessions, and to recorders. If it be thought right to limit this power to fines of a certain amount, up to that limit I would give him a discretionary power, and certainly the limit ought to be very far removed from the present. It is quite obvious to any body, who is in the habit of reading the newspapers, that the fines which are imposed are totally inadequate as punishments. It is almost a mockery of justice, after a gross case has been proved, that the punishment should be a fine of 5*l.* I should certainly give the power of imprisonment in such cases, because to many persons a fine of 50*l.* would be no adequate punishment; imprisonment alone can furnish an adequate punishment to them.

882. Can you form any opinion of the expediency of taking bail in lieu of commitment, upon re-examination?—I am not altogether satisfied upon that point, and therefore I decline giving an opinion. It appears to me that the police magistrates of London are much better able to form a judgment upon that; the general principle is manifest enough, but the application of the principle is attended, certainly, with many difficulties.

883. Having spoken of the extension of the criminal jurisdiction of magistrates, do you think it would be expedient at the same time and for the interest of the public, that some regular extension should take place of their civil jurisdiction?—I think it would be very advantageous; the only general mode of recovering small debts in London is by the court of requests, which is a most unsatisfactory court; as to the recovery of small debts, however perfect your right may be, in a court of law it is so expensive a proceeding that no sensible man would think of such a thing. I certainly should never dream of going to a court of law to recover a debt of 20*l.* or 30*l.*

884. A court of requests is objectionable, is it not, because the parties adjudicating are frequently incompetent, and never persons from whom any qualification is required for the discharge of the duties of their office?—I have occasionally been in the court of requests, and I should have no confidence in such a tribunal.

885. The only qualification is a money qualification, occupying houses of such a rent, which does not necessarily confer judicial qualities?—Certainly not.

886. It has been suggested to the Committee, that it would be expedient to extend to domestic servants the same means of recovering wages that are now given to agricultural labourers; do you think that would be desirable?—I think it would be desirable; and for the same reason, I think it would be desirable to extend to others a similar remedy; for I see no peculiar hardship in the case of domestic servants, and there are no peculiar facilities in determining those claims; the person who is competent to determine them is equally competent to determine others where equal hardship arises, whether it be a question of rent, a question of wages, or of goods sold and delivered; the difficulties of evidence would be precisely the same; the legal difficulties would be the same, and, I should have said, not long ago, greater in the case of wages, on which subject there have been many recent decisions in the superior courts.

887. It has been also suggested to the Committee, that some provision should be made against breaches of the peace, which arise from the use of insulting language, where no actual assault has been committed; what is your opinion upon that subject?—If it is not already provided for, I think undoubtedly it ought to be; but I see great objection to introducing into statutes that for which the common law has already provided; the Committee will find an important decision in the Court of Exchequer upon this subject, during the last term. Recurring to the last question, I see no objection to a summary civil jurisdiction in all cases of simple contract debts within a certain amount; that would include the case to which the Committee has referred, and all others of a similar character, rent, wages, goods sold and delivered. It is quite as great a hardship upon the tradesman who has sold goods and cannot obtain payment for them as it is upon the servant who has given certain services and cannot recover wages.

888. In your experience as recorder, have you seen cases in which it would be desirable to have the power of restoring stolen goods or of enforcing restitution by fine?—I recollect one instance, and if jurisdiction in civil matters is given to the magistrate such as that we have just now discussed, I see no objection to his

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exercising such a power in cases of acquittal, to which the question no doubt refers. It is the exercise of a civil jurisdiction, and wholly distinct from his criminal jurisdiction. He will simply determine, as I heard Mr. Traill propose, which of two parties is entitled to the possession; that, however, is the exercise of a civil jurisdiction.

John Hardwick, Esq., again called in; and further Examined.

J. Hardwick, Esq.

889. *Chairman*,] You were asked whether you would extend the power of magistrates under the Act relating to brokers' charges, &c., and you stated that you would furnish the Committee with an answer to that question more fully than you then did; will you now furnish the Committee with such information as you may have upon the subject?—I beg leave to put in these propositions for improving the law relative to distresses for rent arrear.

[*The Witness delivered in the same, which was read as follows*:]

"*Propositions for improving the Law relating to Distresses for Rent Arrear.*—No landlord or person entitled to distrain for arrears of rent by virtue of any deed or power of attorney, or his or her agent, shall distrain for such arrears (under 20*l.*) without warrant from a justice of the peace, to be granted upon oath, that such rent is unpaid, nor without the presence of a constable. Previously to any sale taking place, the goods to be appraised upon oath to the satisfaction of a magistrate, and then to be tendered at the appraised price to the tenant, and if not accepted by him to be sold by auction or otherwise, so as to obtain the best price. An account of the proceeds to be rendered to a magistrate, and if withheld, to be levied by warrant. If any goods are taken and not inserted in the inventory, a penalty of double value to be levied upon the person distraining. In the event of any dispute, the amount of rent due to be ascertained by a magistrate. In all cases of summary jurisdiction as above and in proceedings under 11 G. 2., c. 19, the landlord or person interested in the rent to be a competent witness. Penalties for removing to avoid a distress to attach where previous to the rent becoming due the tenant's goods are conveyed away under circumstances manifesting an intention to prevent the landlord from distraining, when by law he should be authorized to do so. In addition to the above, one magistrate to be empowered to give possession of tenements or apartments, &c., where the rent reserved shall not exceed £. per annum, upon proof that the premises appear deserted, or that the amount of the annual or other periodical rent is in arrear. The notice to be delivered or affixed and possession given by a constable. Provision to be made for the recovery of penalty for neglecting to deliver a copy of charges for distraining, per 57 G. 3., c. 93, s. 6. In all cases of summary jurisdiction, magistrates to be authorized to summon and convict without a written information being exhibited. If any such tenant or lodger shall continue to hold any tenement or apartment after notice corresponding with the period of occupancy to give up the same shall have been served upon him from the landlord or person under whom he occupies the same, one magistrate to be empowered to give possession.

Lunæ, 22° *die Maii*, 1837.

MEMBERS PRESENT:

Mr. Hawes.	Mr. Alderman Wood
Mr. Elphinstone.	Mr. Marshall.
Mr. Fox Maule.	Mr. Clive.

MR. HAWES, IN THE CHAIR.

William Ballantine, Esquire, called in; and Examined.

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890. *Chairman*.] YOU are senior magistrate of the Thames Police Office?—I am.

891. You have been a magistrate in that office many years?—Since 1821; nearly 16 years.

892. I believe you more particularly superintend the police of the river?—I have, since the death of Captain Richbel, within the last four years, attended more perhaps to it than either of the other magistrates.

893. You are aware that this Committee has referred to it the Police Act of the metropolis, under which the police magistrates exercise their jurisdiction?—Yes.

894. Can

894. Can you suggest to the Committee, in the first place, before your examination proceeds further, any improvements or alterations in that Act which you think would be useful to the public?—No, I am not prepared to make any suggestions.

895. The land jurisdiction of the Thames Police Office is small?—Yes.

896. And the duty of the police magistrates with reference to the land business occupies but little time?—The business is but small; but ours is a peculiar neighbourhood; and according to the state of the river and the state of work is the state of our land district; when the Pool is crowded, we have a great number of persons attending; the prevalence of the easterly winds has kept us very quiet of late; but when the colliers come in, a great number of sailors are brought before us: the district is then crowded, and we are pressed by business on the land side; in fact, we have always a good deal of work going on with the coal-whippers, ballast-heavers, and others; but if there is no work on the river these people go elsewhere, and we are not inconvenienced by them.

897. You are not far from the Lambeth-street Office?—No, not far.

898. Are you at all aware of the comparative state of business in your office and of Lambeth-street Office, both as to the time it occupies, and the nature of the duty?—No, I believe the business is pretty much what our land business would of itself be; but we have a great deal of business relating to the water, such, for instance, as questions with respect to seamen's wages. By a late Act of Parliament (5 & 6 W. 4, c. 19) this sort of question arises very often—a man is shipped at 2*l.* 10*s.* or 3*l.* 10*s.* a month; the master sails with him, and when he gets out to sea finds that man who is shipped at 3*l.* a month, perhaps, not worth 2*l.* By the Act of Parliament, if the master of the vessel objects to pay the wages on the ground of incompetency, we have to ascertain the fact; and sometimes there are other irregularities on the part of the man which induces the master to say, either "You are not entitled to any wages," or, "Having left the ship at such a time, you are only entitled to so much; there is such a deduction to be made." These cases occupy a great deal of time; we have to make ourselves familiar with the law, and inquire into the facts, in the same way as they would do in the Admiralty Court in these wages cases. When such cases come before us, they do not occupy much space on paper, but they occupy a good deal of time; the object being that the master of the vessel, as well as the man, should feel satisfied that our decision is a right one.

899. From the knowledge you possess of the neighbourhood in which your office is placed, and considering the proximity of the Lambeth-street Office, which has much less business than many of the public offices, are you of opinion that the entire business of the two offices might be consolidated and transacted at one, and that the other office might wholly confine its jurisdiction to matters occurring on the river?—I think it might; I have always thought and said so. and I think so still; but for the recent Act of Parliament with reference to seamen's wages, which occupies so much time, I should be disposed to say you might blend the whole of the business of the Thames Police with the other office. I believe I am not more slow than other men, but the questions as to seamen's wages occupy a great deal of time; they employ my mind more than any other part of the business; we do not throw those cases off so quickly.

900. Mr. *Elphinstone.*] Are questions relative to seamen's wages decided by one magistrate or by two?—By one; I consider this the most important part of our duty, and if these questions may be confided to one magistrate, there is no other part of the business which a magistrate has to perform that may not be entrusted to one; I think all the double business may be safely entrusted to one magistrate.

901. *Chairman.*] You, therefore, with your experience, would be disposed to approve of such an alteration in the law as should, in all cases, give one police magistrate the same jurisdiction which now, in certain cases, requires two?—Yes.

902. In giving that opinion, is it confined to police magistrates, that is to say, magistrates properly qualified by their legal education; or do you extend it over the kingdom to justices of the peace in general?—No, I confine it to police magistrates; that is, I should choose to confine myself in what I say to persons properly qualified by professional education. I think no man should be a police magistrate unless he has been an acting barrister for at least seven years before he is made a police magistrate, for unless a man be a professional lawyer I think he is not fitted to be a police magistrate, at least, not so fitted as I think

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he ought to be; indeed it is almost indispensably necessary that he should have attended and practised at the quarter sessions for some years before his appointment, or at least given his attention for a length of time to the practice of criminal law.

903. If the alteration which you have suggested should take place, and the land business of the whole district of the two offices should be confined to the Lambeth-street Office, would you then require the same number of magistrates at the Thames Police Office?—Provided there were no double business, two magistrates would do as well as three, and I should say they would do better. Practically, when the two magistrates are sitting, only one acts. Suppose it is a question of assault; one magistrate is sitting and the other is sitting by, and in order to avoid the appearance of a difference of opinion, we leave it generally to the single magistrate.

904. Practically, then, one magistrate does now exercise the jurisdiction for which the law requires two?—Yes. If any difficulty occur in any respect before a single magistrate, it is made the subject of conversation with the other police magistrates, or with other legal men; and we generally adjourn the case for a time, in order to come to a right decision.

905. If it were proposed to place the river police under the Commissioners of Police, so that the whole executive police of the metropolis, land and river, might be brought under one control, and there were a resident Assistant-commissioner or Commissioners, for the purpose of managing the executive department, are you of opinion that such an alteration could be made with benefit to the public, or not?—Of course the benefit to the public would depend upon how it was practically worked out; but, reasoning *a priori*, there is no objection to it, and I think it is very practicable.

906. So that if the magistrates at the Thames Police Office or the Lambeth-street Office (whichever might be selected to be the office to discharge the duties of the two offices) were confined strictly to judicial duties, and all the executive duties of the river police were placed under the same control as that which now manages the land police, the Commissioners' for instance, are you of opinion that any practical difficulty stands in the way of such an arrangement, or that there is any objection to it on the score of principle?—There is no objection to it on the score of principle, and I think it is quite practicable; I think there would be difficulties attending the working of it out, but if it can be worked out, it certainly would be more convenient than the present system. I, as a magistrate, would be very glad to have my mind and my time discharged from looking after the people to the extent I do.

907. To be confined to the discharge of your judicial functions?—Yes.

908. Mr. *Fox Maule.*] Will you state to the Committee what the difficulties are, which you think would arise in working out that plan?—In the first place it is an alteration, and every alteration is attended with some inconveniences. The jurisdiction on the river is a peculiar one, and unless there were a third Commissioner, and that a man acquainted with the waterside business, the duty might not be properly performed; either such a man must be the third Commissioner, or he must have a power very nearly equal to that of a Commissioner, and should live upon the spot; if so, I think it might be worked out. Ours is a species of consulate; there are many applications made to us by foreigners, and others, arising out of wrangles on board their own ships; these are matters with which strictly we have no right to interfere, but they do make applications to us, and we help them as far as we can; we send them away rather impressed with the civility of our office, than giving them substantial relief.

909. Then whoever has to take charge of that business must have judicial powers vested in him as well as executive powers?—No, I think not; he would be at the head of the river police, I apprehend, and he would see they worked out the arranged plan, but I do not see any necessity for giving him judicial powers. I adopt the view which I suppose is involved in the questions which have been put to me; I would separate the judicial and executive functions of such a man as much as possible.

910. Then how do you propose that this individual is to arrange the disputes which come before you between seamen and their masters?—I am only saying, if you propose to follow out such a plan you must have that sort of man. The case that would arise would be some such case as this; a master of a vessel will say, "There are some of my men on shore, and I must account for these people when

when I get back to Russia," or elsewhere. We have no right to take these men up and put them on board the vessel, but I hear what he has to say, and I tell him, perhaps, to go to his consul, or I desire some of the police to look out and see if they can find the men; and, therefore, without its being strictly lawful, or within our province, we give them that sort of accommodation; and for that purpose it requires an active intelligent man of good temper and good sense; but there is no necessity for any judicial authority in that.

911. *Chairman.*] On the supposition that cases requiring judicial investigation and decision should occur, on the plan proposed, it would be the duty of the superintendent or Assistant-commissioner to refer them to the local magistrates?—Yes.

912. Wherever local magistrates were sitting,—at Lambeth-street or Union Hall, or the Town Hall, all of which offices are on the banks of the river?—Yes, I would say with reference to Lambeth-street and the Thames Police, that taking the whole of the land district of the Thames Police, as it now is, including the business arising from the water, I think that would be more than two magistrates could efficiently do; I think a part of the present Lambeth-street district must be thrown into some other district, and then the whole remainder might be done at one office; I would throw off a small portion of the Lambeth-street district on the north side. With respect to the magistrates themselves, they care very little about the districts; if a question is brought before them they discuss and decide it without caring whence it comes; it can make no difference to them.

913. If the single jurisdiction were given in all cases, would it not be desirable that the police offices should be constructed more as a court, and that the magistrate presiding should wear a bar dress, in order to give more effect to the discharge of the duties of his office, and to maintain order?—I have too much respect for the bar dress not to feel a pride in wearing it whenever I have an opportunity; I think it would add dignity to the court; all our police offices, with the exception of one or two lately built, are undignified and unworthy places for a gentleman to be in; it rather disgraces a man to be huddled up in a crowd in such places.

914. Mr. *Elphinstone.*] Would it not also be advisable, in the new police offices, that there should be proper rooms provided for witnesses and other persons in attendance?—Yes; I think it indispensably necessary to give to the public the conveniences they are entitled to, including convenient places for those who are to be examined, or who may have to wait, without being annoyed or offended by other persons; I think they have a very good office at Worship-street; I believe that is well constructed both for the magistrates and the public.

915. Do you hear any complaints from the public, and particularly from the female part of it, with regard to the insufficiency of the accommodation?—I hear it constantly complained of in my own office; I hear them constantly wrangling about the great inconvenience of it; and when we are very much employed in wet weather, men and women are standing out in the street and cannot get in, and often the stench is intolerable.

916 *Chairman.*] Does it not, in point of fact, tend to check prosecutions for many petty offences before you?—I am not able to say that; my opinion would be one of mere speculation, if I gave it; I do not know the fact as certain; I know that some persons do not attend when they ought to attend, but I do not know their motives.

917. Do you think there would be any advantage in having lock-up houses attached to the police offices, to which prisoners might be occasionally committed at the discretion of the magistrates, in lieu of sending them to gaol?—I am unable to answer that; but any arrangement that would save certain persons occasionally from the degradation of the passage in the van from the police office to the gaol would be desirable; I do not know how that is to be accomplished.

918. Mr. *Fox Maule.*] Do you think it would be worth while, merely for the sake of attending to the feelings of those individuals which may occasionally happen to be trenched upon, to go to the expense of establishing lock-up houses attached to the police-offices?—Speaking upon the instant, I should say not; but I have seen painful instances of respectable persons, who have been sent off in the van for re-examination or want of bail; I would save them from this mortification if I could.

919. *Chairman.*] In all such cases they might be spared the pain and degradation of removal by being locked up under the control and custody of the office?

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office?—Yes, it would perhaps answer the purpose, if the Metropolitan Police, who have the custody of the prisoners, and who produce them before the magistrates, had more convenient places to put parties in; they have lock-up places, and might modify them so as to afford convenience in that way.

920. Mr. *Fox Maule.*] In cases where it is desirable to consult the feelings of respectable individuals, has not the magistrate a discretional power of sending such an individual to a place of custody for the night in a coach with an officer?—Yes, and so he does; but there is an expense attending it; the magistrate will not pay for a coach, and he will not let the public pay for it; if the party is a respectable individual, and there is any reason for respecting his feelings, then he may pay for it himself; I committed a man named Pegsworth, for murder, and when I committed him, I sent him off with two or three officers in a hackney coach; the Government paid that expense; it was made a matter of charge; and he was brought down again in that way, but it was for safe custody, and also because as soon as the inquiry was over before me, I was anxious to get him away to allay the excitement his presence occasioned.

921. *Chairman.*] Would you alter the hours which are now prescribed by the Act of Parliament, or which exist in practice, at the offices?—It is an irksome and I believe it is an unnecessary attendance in the evening; I believe, if our sittings were longer in the morning, and people had an opportunity of coming as soon as they had any thing to say or do, the public would be perfectly satisfied, and it would be more agreeable to ourselves; I have a residence at the office, and therefore on my full days it is no inconvenience for me to go by my private staircase from my library into the official room; I go there night after night, and then I generally find that the things which come before me had better have come in the morning; for instance, sometimes a pawnbroker's affidavit or declaration is brought to be signed, or people who have been wrangling for the last three or four hours, and then come for a warrant in an excited state. If there is an old quarrel of a day or two's standing, they come in the evening when they are drunk; it is then they think of old affronts, and generally come in such a state that I refuse to attend to them; it seldom happens that a charge of felony is brought on, for you cannot go into it; you only hear there is a charge of felony, and commit the party in the meantime, whereas the police might as well have kept the case and the party until the morning, as not.

922. What alteration in the hours would you propose, provided the evening sitting were abolished?—I should say it would be necessary for the magistrates to attend daily, and I should expect the magistrates to work out their business as ong as it lasts, if it were necessary; and very often we do so; I have sat as late as five or six o'clock on the same matter, and I believe every other magistrate has done so; I think if you were to say from eleven o'clock to four or five it would be sufficient; and even then there would be a lull at times. You would have very little to do at some of the police offices, taking it day by day; sometimes there would be days in which it would not last so long as that, and sometimes it would last much longer. Our office is at the extreme east end of the town, and, as a matter of personal convenience, if a magistrate wish to change the scene and dine at his club, or elsewhere in the west, he must return all that distance by seven, which is an irksome thing, and to know that he will have little or nothing to do when he gets there makes it still more irksome.

923. Mr. *Fox Maule.*] Do you think, if the evening sittings were done away with, many individuals would suffer imprisonment during the whole of the night who would be discharged, probably, were the magistrate present at his evening duty?—I do not think that one person in six months would be so circumstanced. In the cases, for instance, of men coming out of the docks, bringing away things which do not belong to them, when they are brought before the magistrate at night he must either come suddenly to his conclusion, and fine the man, 10*s.*, or 20*s.* or 40*s.*, or he must let the matter stand over till the morning; we have no power to take bail for his appearance; if he is fined and pays, he is discharged; but if he was taken to the police station at night, he would be entitled to bail, it being a misdemeanor, and as the utmost extent of the fine is 5*l.* so he might find surety for 10*l.* to appear next day at the police-office; we cannot take bail in such case, to appear before us, but the police can.

924. *Chairman.*] The police constables, I believe, do not now take bail at the station-house?—Yes; if a man is brought there, charged with an assault, if he finds bail or enters into his recognizance to appear the next day, he is dismissed, but the magistrates cannot take bail for the party's appearance before themselves;

selves; the police, I apprehend, may take bail in every case of misdemeanor, to appear and answer next day before the magistrate.

925. Mr. *Fox Maule.*] And as a magistrate, speaking of your own district, you say the application for warrants during the evening sittings generally arise from excited passions more than the applications in the morning?—They do; and I believe in cases of assault I refuse warrants in 99 cases out of the 100, when the application is made in the evening. I generally find, when the charge comes before me, or it is an application for a warrant, that the parties are in an excited state, and are unable to explain the case properly in an evening.

926. Then you think, without injury to the public service or the due administration of justice, such applications for warrants as occur during the evening sittings, might be safely deferred until the next morning?—Certainly.

927. *Chairman.*] Do you see any reason why the powers of the Commissioners of police to take bail should not be put in force in cases of petty misdemeanor?—I think I would not give them that power in any case of felony, but in cases of misdemeanor I think they ought to have the power.

928. Have you ever known frivolous or vexatious charges even to the extent of felony, sometimes brought to the station-house;—Yes, very often.

929. Do you think it would tend to prevent their making or persisting in such charges if the inspectors on duty at the station-house were authorized to require the person making the charge to enter into a recognizance to appear before a magistrate?—I think that would be a very proper arrangement, and I would extend it to every case where a man is put into custody; it constantly occurs that a man is put into custody, and his name is entered in the book in the usual way, and when the case is called on, then there is no one to prosecute, and the prosecutor not known.

930. In that case would it not he desirable that the magistrates should discharge the accused person on his own recognizance, unless, from some knowledge of his character, or the circumstances of the case, there is reason to believe the charge to be true?—The magistrates would in such case discharge the prisoner without requiring him to enter into his recognizance, unless, from some knowledge of his character, or the circumstances of the case, there may be reason to believe the charge to be true; then the magistrate would probably require some security for his appearance at the next session, and in the mean time to be of good behaviour.

931. On a party failing to make good his charge, or in case the charge were a frivolous or vexatious one, what would be your opinion of allowing the forfeiture of the recognizance and compensating the party charged out of it?—We can only declare the recognizance forfeited, when the condition of such recognizance has not been complied with; somebody else estreats it; it is raised into money in some other quarter; but it is a great hardship for a man to be detained all night in custody, and in the morning to be discharged without knowing the party, perhaps, or his reason upon oath, for placing him in custody; it would be well, if some remedy could be found for this; he should also pay 1*s.* for his discharge; but this 1*s.* going to the public, we very frequently, I should say in such cases, always, dispense with the payment.

932. Do you think the magistrates should have the power at once to estreat the recognizance, and, if the party should have the means of paying, that there should be a power to enforce the payment by distress?—I think not; it is very likely the magistrate might act upon the impulse of the moment, and might be often wrong; the party has a remedy; there is a proceeding in the law, though it is remote, by action or otherwise, for which reason I think it had better remain as it is.

933. Mr. *Marshall.*] By whom is the recognizance estreated?—It is returned to the sessions, and sent through the sessions to the Court of Exchequer; then there is a letter written to the parties (I believe the attorney gets more than any body else in the matter) and the sheriff levies the distress, but generally the party gets off.

934. *Chairman.*] You are of opinion, then, that the power of forfeiture and levying the amount of the recognizance would not be an important one for the magistrates to possess?—I am supposing a recognizance which does not now exist, that is a recognizance given by a man charging another with an offence, and failing to appear before the magistrate to substantiate the charge; if he did appear the next day, of course he answers the terms of the recognizance,

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and the person who is charged has his remedy if he has been improperly charged upon the motion of that man; but if he does not appear, his recognizance should be estreated in the way that all other recognizances are estreated, and the money should be raised upon it in the ordinary way.

935. Do you think it would be desirable to alter the Police Act, with a view to give you the power of levying the recognizances which are forfeited, if you thought fit?—Yes, if you could define the process in a very simple way; if there is any difficulty about it I think we are better without it.

936. You admit the principle is a sound and useful one; but you think there might be some difficulties in working it out?—Yes; a lawyer, more especially, would find difficulties in it, unless it could be defined by some Act of Parliament in consequence of this Committee.

937. What is your opinion of the propriety of giving to police magistrates the power to mitigate all penalties?—It is a very proper power to give them, as it seems to me; the Act of Parliament, for instance, says it shall be lawful under certain circumstances for a magistrate to fine in any sum not exceeding 5*l.*; that is, if you find a man guilty, you may fine him 5*l.*; but the magistrate will look at the circumstances to see whether there are any reasons which he can apply to his own conscience to reduce that fine, and if so, he reduces it accordingly.

938. Were you at all acquainted with a Bill which was introduced two or three years ago, intituled, "A Bill for rendering more effectual the Proceedings in certain Cases before Justices of the Peace?"—Yes.

939. The 11th Clause of that Bill contains a provision for the mitigation of penalties; will you favour the Committee with your opinion upon that?—I approve that clause entirely, except only the proviso; I think it would be a very good thing to strike out that proviso, for it is with respect to that that I feel a difficulty in convictions before me. It is "Provided always, that nothing herein contained shall extend or apply to any conviction for any offence against any Act now in force or hereafter to be made, relating to the Customs, Excise or Stamps;" new we have a great deal to do with cases of that sort, and we must either fine a party 100*l.*,—perhaps a man who is not worth sixpence, for we cannot mitigate it,—or we must go upon another section for the treble value of the thing. The Commissioners of the Customs or Excise have the power to mitigate in the 100*l.* penalty case; and the solicitor at the Customs having got his instructions from the Commissioners, says "The Commissioners mitigate this to 40*s.*" I pronounce a fine of 100*l.*, and the solicitor says, "The Commissioners mitigate it to 40*s.* or even 10*s.*" He produces the authority for it; the party pays the money, and goes away. I think the power should be in the magistrates and not in the Commissioners, for the Commissioners know nothing of the evidence when they determine that it shall be mitigated to 20*s.* or 40*s.*; they can know nothing of the evidence until the magistrate himself has heard it upon oath and convicted the party.

940. In short you would include all cases within that class, and make it apply equally to convictions for offences against the Customs, Excise or Stamps?—Yes.

941. As a matter of practice do the Commissioners know anything respecting the facts in any case when they determine to mitigate the penalty?—I cannot answer that, but my belief is that in many cases they do not.

942. Do you think that the Commissioners retaining this power to themselves in any way tends to prevent smuggling, or secure the revenue?—Not at all.

943. It was proposed at one time to remove that power from the Commissioners, and vest it in the magistrates, was it not?—It was; I was accessory to preparing a clause to that effect. I had some conversation with the solicitor of the Customs about it; I was informed by him, afterwards, that the clause had been struck out in the House of Commons, at which he was very much surprised; I cannot vouch for the perfect accuracy of what I am stating, but I have no hesitation in saying that the discretionary power should be left to the magistrate who knows the facts upon oath; I am perfectly satisfied it cannot injure the revenue; there is no process of reasoning from which you can suppose it would.

944. As a general principle, do you think it right or wrong that the Commissioners of Excise or Customs should control the magistrates in such cases?—I think they ought not; and the same thing which induces me to agree to the suggestion that the executive should be separated from the judicial duties of the magistrate,

magistrate, induces me to say, that they who are the executive should have nothing to do with the judgment of a magistrate who knows the facts, and I consider that the Commissioners, without knowing the facts in many cases that came before them, have determined what should be the amount of penalty, before the evidence is given; the evidence must be given before me or a magistrate who is sitting, evidence of facts proper to be received, delivered on oath.

945. With reference to the opinion you have given as to the vesting the mitigation of penalties in the breast of the magistrate, you confine it to police magistrates?—Yes, I am speaking of them always, and I have endeavoured to define what a police magistrate ought to be.

946. In the case of fines imposed under certain Acts of Parliament, the Beer Act or the Licensed Victuallers Act, portions of which go to the common informers; do you think it advisable to have the power of mitigation, and also the power to appropriate such part only of the fine as the magistrates might think fit to the informers, or otherwise, in case it appeared to be a merely vexatious and frivolous information?—I have not thought upon that; I apprehend it would do no harm, and I am not aware that it would be of any great service; I think, under the Act of Parliament which has been referred to, it is a penalty not exceeding such a sum, but it does not limit it at the other end; it does not say 1*l.* and not exceeding 5*l.*; I am speaking from memory, but I believe a magistrate is very much at large as to what sum he may inflict within the penalty. If a magistrate had the power, in a case of vexation, to levy the costs upon the informer, it would answer the whole purpose.

947. Have you many juvenile offenders brought before you at the Thames Police Office?—Yes; but not so many as they have at other offices.

948. Would it, or not, be desirable to have the power to punish by whipping in certain cases, and to discharge the offenders at once?—I have never been able to make up my mind as to the propriety of intrusting to any one magistrate the power of whipping. I do not like that process; if you whip a boy, and once mark his back, he never does any good as long as he lives. You find that is supposed to be the case with the soldier; if you once break the skin, he is never worth any thing afterwards. It has been made a matter of conversation amongst police magistrates, and I think the general opinion is, that it would be beneficial to have that power; it is a power I have never coveted myself, and I have generally taken the other side of the argument; but others seem to think it desirable to have the power, and I could assign no sufficient objection to it; I should confine such power strictly to the police magistrates.

949. And perhaps also to children of tender age?—Yes, and to boys.

950. You perhaps regard it as a less evil than that which ensues from the committal of such boys to prison?—I do.

951. Mr. *Fox Maule.*] Do you think a knowledge that the magistrates had that power would have much effect upon the minds of juvenile delinquents?—I think it would; I think half-a-dozen whippings, properly administered, would prevent the necessity of any more for a long time.

952. That they would hold a recurrence of the police office then in rather more terror than they do at present?—Yes.

953. *Chairman.*] Will you look at the 31st section of the Police Act, and allow me to ask whether magistrates are not frequently in the habit of convicting under that section when in fact a felony has been committed, that being a clause to give them power to commit only on suspicion?—We have no occasion in my office to resort to that section; I do not know the fact, but I have heard that at other offices they have done so. Under the Police Act, as it originally stood, and as it has been incorporated into this system, if a man had the unlawful possession of property, or did not give a satisfactory account of it, we might fine him 5*l.* or commit him to gaol for so many weeks, or we might, without imposing a fine, commit him to gaol for any time not exceeding two months, there to be kept to hard labour. I often do that where felonies have been actually committed, but that is owing to the peculiarity of our jurisdiction; in some cases I should stop the departure of vessels if I bound over the parties to prosecute.

954. Do not similar convictions take place under the 38th and 39th sections of this Act?—Yes, the 39th is the section we go upon.

955. Is there not also a section in the Pawnbrokers' Act against illegal pawning and disposal of goods under which you also convict?—Yes, under another Act of Parliament, 39 & 40 Geo. 3, c. 99, s. 8.

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956. Is not the object of such a summary mode of dealing with cases of felony, to avoid the expense and trouble of sending to trial cases where the evidence is clear, but the amount is trifling, or the parties injured are unwilling to prosecute?—Such cases are undoubtedly disposed of under the Pawnbrokers' Act, and probably for one or other of the reasons supposed; suppose linen has been sent to a washerwoman, she receives, intending to wash and give it honestly back again, something breaks in upon her and she pawns it; she has a lawful possession, and unlawfully pawns. It is also not very easy to distinguish the felony from the misdemeanor. If you could infer from any circumstance that she got possession of the linen at the time, intending to make away with it, that would be a felony, and not within the meaning of the Pawnbrokers Act.

957. Still under those sections of the Police Act, which I have referred to, and the Pawnbrokers Act, you do deal with cases of felony in a summary manner?—Certainly we do so; I should say it was more under the 39th section that I myself act.

958. Do you not think the great object of that, is to avoid the expense and trouble of a trial to the parties prosecuting?—No doubt parties are very anxious to avoid an irksome attendance at the office and in court.

959. Do you think that summary proceeding is productive of injustice to the accused, or of injury to the public?—I think it is never productive of either.

960. Do you think the prisoner himself or the prisoner's friends, as well as the prosecutor or his legal adviser, readily acquiesce in that mode of proceeding?—It seldom occurs that there is an attorney present in cases of unlawful pawning; they are generally persons of a poorer description; I never met with an objection; the prosecutor seems to be satisfied to get rid of an irksome attendance, and the party who is fined seems grateful that the thing is treated more easily; and more good is done, perhaps, by that mode of treating it. There are cases of distress, in which persons being poor but generally honest and industrious, will pawn linen given to them to wash, or things which they have to make for shops; this is all unlawful pawning, or, under a particular Act of Parliament with reference to work given out, a misdemeanor, which may be dealt with very harshly; but I think, upon the whole, we do more good by going upon the milder mode than by running to extremes.

961. May it be inferred that the public feeling is favourable to such a jurisdiction, speaking from your extensive experience upon the subject?—If you confine it to such cases as we have been talking about, I should say, as far as the public feeling is concerned, it is so; and it would and does strike the public as an absurdity, and it is shocking to ourselves, to send persons to trial for some slight offence, when we know if a jury find them guilty, the general consequence would be that they will be sent to the house of correction for one week, or fined 1*s.*, and discharged.

962. Then, are you disposed, or not, to recommend that police magistrates should have the power of deciding summarily in cases of simple larceny?—Without venturing to recommend, I am of opinion, that in cases of simple larceny, with well defined limitations, the police magistrates might (beneficially) have the power of deciding summarily in cases of simple larceny, as also in cases of stealing from the person without violence; that is, picking a pocket of a handkerchief.

963. Would you recommend such power, if given, to be restricted as to the age of the offender, or the value of the property stolen, or would you extend it to all cases of simple larceny, without reference to age or value?—Certainly not to the age of the offender; but if the amount were large or any peculiarity belonged to the theft; in such case the matter should go before a jury.

964. Should a conviction before a magistrate for simple larceny incur a forfeiture of goods?—I think a conviction before a magistrate should have the same effect as a conviction before a jury; the consequence of a conviction for larceny is a forfeiture of goods; and I must take it that the consequences will be the same as if it were a conviction upon the verdict of a jury. This is a jurisdiction which would be exercised, (provided the magistrate have discretion in the use of it,) very beneficial to the public.

965. What punishment do you think a magistrate should be authorized to inflict; should it include solitary confinement and whipping, or not?—If you limit the term of imprisonment, I think it might safely include both; but it should not be in his power to transport a man for seven years. I would not leave that to any man without a jury; otherwise I would leave the magistrate with the

same

same power which you leave to the court. I would not leave to a single magistrate the power of transporting, nor the power of imprisonment beyond a certain term; but, with that qualification, I would leave him the same power as the justices in session have in simple larceny.

966. Supposing it were thought advisable still to retain the assistance of a jury in the cases mentioned, would you retain the number of 12, or diminish that number?—If I am asked whether, in a case of simple larceny, it would be desirable for a single magistrate to have a jury or not, I should say not, for he could not get on with the business.

967. Do you think it would be desirable to give a prisoner or prosecutor the right of requiring a magistrate to send the case before a jury for trial?—I think it would be desirable to give the prosecutor or the prisoner the right of requiring the magistrates to send the case before a jury. The magistrate should also retain his power of so doing, although not required by either party; we have a summary jurisdiction in matters of assault; but we have only the right to exercise that jurisdiction by the consent of both parties; they may reject it, and that they do not, I have sometimes thought, is owing to their not being aware of the fact that they may do so.

968. May it not arise from a desire to settle the case without trouble or delay?—I do not believe they are aware of it; if there is any particular atrocity or violence, we exercise our discretion, and send the case to a jury, because we think (provided the party is guilty of the thing charged) we have not the power of punishing the offence sufficiently; such cases we send to the sessions, and very often the parties make it up before trial.

969. Do you think that the public would be disposed to acquiesce in that extension of the jurisdiction of the police magistrates in cases of simple larceny, involving, as it does, the abolition of trial by jury?—I take it they would be dissatisfied at the first blush of the thing, but whether they would approve of it or not, would depend upon the knowledge they acquired of the mode in which the thing was done; I think at first there would probably be a prejudice against it.

970. But you think so soon as it was known to be a power intrusted only to properly qualified magistrates, and exercised by magistrates in open court or courts where a great degree of publicity must attend their proceedings, that the prejudice would be only one of the moment?—I think the prejudice would vanish if the discussion or the inquiry were managed with good sense, and evidence which the law enables you to receive only received, and that men were not carried away by prejudice and passion; if, in fact, the single judge conducted himself according to law, and not according to caprice, the prejudice would vanish; I think it would soon be removed.

971. Considering the extensive summary jurisdiction now exercised by the magistrates under various Acts of Parliament, under the Police Act, which has been alluded to, under the Pawnbrokers Act, and under the Malicious Trespass Act, do you think, were the summary jurisdiction limited to cases of simple larceny, it would be any material extension of the power of the magistrates generally, or would it not rather be a narrowing of that power, inasmuch as it was defined and confined to extend only to cases of simple larceny?—It would enlarge their powers, undoubtedly, because it would give them a summary jurisdiction to an extent which they have not at present in any thing like parallel cases.

972. But as to the exercise of summary powers under various Acts, were that taken away and a summary power only given in the case of simple larceny, do you think that really the power of the magistrates with reference to the summary jurisdiction would be materially extended?—Yes, as far as criminal matters go, it would be extended.

973. But, looking at the balance of cases, do you think there would be any increase of the summary jurisdiction?—That is a difficult question to answer.

974. Mr. *Marshall.*] Would the effect of giving to the police magistrates this power of summary conviction, practically, be to prevent them from deciding so frequently as they are now obliged to do under the 38th and 39th sections of the Police Act, and under the Pawnbrokers Act?—Yes, I think it would.

975. *Chairman.*] In fact, it would enable them to act directly and only under a statute, instead of exercising a power not expressly given, but which they avail themselves of for the general ends of justice?—Yes, it would enable them to do it; it would certainly relieve the magistrates from the necessity of

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resorting to those sections of the Police Act, and also to the Pawnbrokers Act; there are some cases necessarily occur in which the offence is positively a felony; but under certain circumstances we are disposed to treat them in the milder way, namely, as cases of unlawful pawning.

976. What, then, is your opinion as to the real extension of jurisdiction which would be intrusted to police magistrates, were such an alteration of the law to take place?—I fear that I do not quite understand the question; the real extension of the powers of the police magistrates would be into cases (summarily) of simple larceny, &c.; also into and over certain cases of stealing from the person, a power that at present they have not, and therefore this would be the real extension of their jurisdiction or power.

977. Will you turn to the 49th section of the Police Act, and see whether that section might not be extended to all cases of demands or disputes with regard to labour or work, and to cases of domestic servants?—It might; I think, also, it ought to be so extended; it is applicable now to labour done only, and not to contracts for labour to be done; labourers are hired perhaps to remove a ship, or as lumpers or coal-whippers; time is money to such men; they are hired for a Monday, for instance; they go alongside the ship, and they are not employed; the man who has hired them does not want them, or employs other hands; now that may be the loss of a day's work. In our ordinary courts a man has his remedy by action for a breach of contract; but I am disposed to think among these poor men the magistrates should have the power to award a compensation for the day's work. If a man has been thrown out of a day's work it is an important thing to him, living from hand to mouth; I think, therefore, a magistrate should have such power; there are small tradesmen who do work on board ship, such as painting, joinering, carpentering, &c., and who find the materials, the whole amounting to 2*l.* or 3*l.*, or 5*l.*, perhaps; with respect to them we have no jurisdiction within this section, because it is not a case purely of labour; we separate the materials from the labour, and enter into a discussion with the parties upon the question of the mere labour, throwing off the materials found, by which a man loses the value of the materials and is only paid for his labour, but he does that rather than not get anything; for, whether right or wrong, the court of requests, I believe, exercises no jurisdiction whatever over such matters upon the river, and a poor man is denied justice to that extent.

978. Mr. *Marshall.*] Do you think there would be any objection to extending this power to the county and borough magistrates throughout England?—Upon this particular clause certainly not; no objection whatever; they could not do wrong under it, but might do a great deal of good; and, whilst upon this subject, it occurs to me to make an observation with respect to gangs of men; a gang of coal-whippers, for instance, of nine men, or a gang of ballast-heavers, or a body of sailors who fancy there is some money due to them for wages; we used to include the names of all these men, perhaps nine or ten, in one summons; no objection was for a long time made to it; but at last an objection was made, and we are now obliged, in every instance, to grant a summons for each of the nine men, which is an unnecessary expense. Now, I apprehend that by doing that which at present is wrong, including all these names upon one summons, if it is made lawful by enactment, you will save a great deal of money, for as one summons will cost 3*s.* or 4*s.*, if there are nine separate summonses, of course they will cost nine times as much; we used to put all these nine men's names in one summons, but an objection being made, it was a valid objection, and we had to begin again; but it is a waste of money, and it had better be thrown into one summons, provided the law of the thing is made right at last.

979. Would you confine that to the case of wages?—Yes, and to where the parties are working in gangs.

980. *Chairman.* With regard to assaults, would you alter the law so far as to give a magistrate the power to inflict hard labour and imprisonment, extending the power he now has of fining?—Yes, giving the power either of fining or imprisoning with hard labour attached to it; I think that is most proper, and I have always thought the clause defective in not having that attached to it.

981. Have you not sometimes felt that it has prevented your punishing an individual for an atrocious assault in the manner in which he deserved?—I have felt that I could not punish such a party in the way he deserved.

982. In the Bill, to which reference has been made, "For the more effectual Administration of the duties of Justices of the Peace," power is given to the magistrates

magistrates to enter gambling-houses upon the oath of any churchwarden, overseer or vestry-clerk of the parish, and to bring the parties found there before him; what would be your opinion of such an enactment?—We have no houses of that sort near us; but I should say, *primâ facie*, without much consideration, that is a very proper power for a magistrate to have; I believe it is seldom that a magistrate has occasion to exercise that power.

983. It has been suggested by some of the witnesses that the power should be extended to unlicensed theatres and brothels, where disturbances may take place; is that your opinion?—I think it would be very proper to authorize the police to make such entries, or for the police, on their own responsibility, to make an entry, and bring the parties before a magistrate; but I hardly see the necessity, except with respect to gaming-houses. I think the police might have the power; or, if the police were to lay an information upon oath before a magistrate, the magistrate might give his warrant or authority to enter unlicensed theatres or coffee-shops, or gaming-houses, or any place where people congregate in large numbers. It does not signify of what quality the houses are which come within the term, "gaming-houses." In our humble district, we have no gaming-houses of a superior description. I may here state that in cases of assault upon the high seas, we have a summary jurisdiction, but that it is limited to three months after the assault occurs; now, if a man gets a violent beating immediately after he sails, and goes to the Cape of Good Hope, when he comes back the three months will have expired, and he has not the benefit of that Act; instead, therefore, of being limited to three months from the date of the assault, it should be limited to three months after the arrival of the ship at her port of discharge, that is to say, it should be limited to three months from the time when the party assaulted is in a condition to make his complaint.

984. It has been suggested by one of the magistrates who has been examined, that it would be desirable to make abusive language or provoking words, which may lead to a breach of the peace, punishable, or to require the party to enter into sureties to keep the peace, inasmuch as it frequently leads to disputes injurious to individuals, for which there is no redress; do you concur in that?—We have that by the common law already.

985. But there is no summary power?—Not to fine, but you may bind them over to keep the peace. Our power is undefinable with respect to provocation by words or otherwise; but it is regulated by the magistrate's good sense and knowledge of the world, from which the people know what he is doing. If they are expressions so offensive that a man is likely to be provoked by them to knock another down, that is an excitement to a breach of the peace, for which the party should be bound over.

986. Have the magistrates any power to forfeit those recognizances?—They would be returned to the sessions, and any thing subsequent to that would be out of their hands.

987. Are there not many matters in the nature of private wrongs for which some extension of the magistrate's powers might be desirable—bites of dogs, for instance?—A great deal is done by the influence of a discreet magistrate, acting in kindness and good sense in his neighbourhood; he attracts the respect and good opinion of the people about him; his wish, and the opinion he expresses, will have more effect than Acts of Parliament.

988. Suppose a dog inflicts a serious wound upon a child, what remedy has the parent of the child against the owner of the dog?—He has no remedy against him but by action, and that only in very few and limited cases. If there be a dog which is a nuisance, the law of England, without any clause in an Act of Parliament, prescribes a remedy; any man may abate a nuisance.

989. Do you not think it would be desirable to give a summary power to fine, and to award a compensation out of that fine to the party injured?—I am not prepared to say any thing upon that subject.

990. With regard to disputes between landlord and tenant as to distresses for rent and the detention of houses; are not many complaints made as to the difficulty and expensive nature of the only redress in their power?—Yes, and the delay which belongs to it; I hear many complaints of that.

991. Do you think these cases might be met by giving the magistrates a jurisdiction limited as to amount?—I do not know how that may be, because it supposes a trial of the right of possession, which is really a question of ejectment, after all. There is a clause in an Act of Parliament, which enables us, in case of a vacant

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a vacant possession, to direct a notice to be put up, which, if the rent be not paid before a certain day, then the magistrates may break open the door and put the landlord into possession; that power we have at present, but there must be a certain quantity of rent due, and the notice must remain for a certain time, and it must be a vacant possession; there must be nobody in the house, or otherwise we cannot give possession.

992. With regard to the detention of lodgings or houses at weekly or monthly rents; are there not numerous complaints made by the landlords?—Yes.

993. Do you think it desirable there should be some speedy mode of redress in such cases?—Yes; I think it desirable that some power should be given to the magistrates.

994. Might it not be limited in amount, so as to prevent any objection being raised as to the jurisdiction, on the score of trying a right, or establishing a right to the property?—It might be limited to a mere lodger, and then the question of title would not arise; the question of title does not arise in a matter of that sort; many people get possession of lodgings and keep the key, and notice is given, but you cannot get rid of them.

995. With regard to the detention of property contrary to good faith, or without any pretext of right, or after a tender of expenses; are there many cases of hardship and oppression of that nature, where the remedy by action is not worth pursuing, or beyond the means of the party aggrieved?—Yes, there are.

996. Might not a magistrate be authorized to summon a party detaining property, inquire into the question of ownership, determine the amount of lien, if any, and make restitution of the property?—Yes, he might; the sort of case that comes before us is, for instance, a case of a chest and bedding, perhaps, of a seaman; they generally have to pay 14*s*. a week; they pay 14*s*. in advance, and if he has any ready money at all, the lodging-house keeper also takes charge of that, and at last the sailor gets no balance, but it is declared he has eat and drunk it up, and at last he cannot get his clothes. They are all cases of absolute robbery upon the seamen, and those are cases in which we have no jurisdiction. A clause in some Act of Parliament has recently appeared, in which it is said, that a magistrate may order a thing to be given up in cases where there is no claim; but in every case the crimp or lodging-house keeper lays a claim, which carries it away from our jurisdiction, so that that section is quite inoperative; we cannot make use of it, and the law remains in the state in which it was before that clause was introduced.

997. Do you think a power might be given to the magistrates to order restitution of property where it is in the hands of any broker or dealer in second-hand goods, in the same way that he has the power with reference to stolen property in pawnbrokers' hands?—Yes, I think the power should be given to him, but that is only declaratory of the common law; for no man can derive title to property which has been stolen, unless for the purposes of trade, and which has been very much extended, and property has been changed in what they call "market overt;" for instance, if a stolen horse be properly registered in Smithfield market, and the toll paid, and a man buys it, the purchase is good in the purchaser because that is called "market overt," and by a strained construction, of very old date, every man's shop in London is considered "market overt" during the hours of business for the matter he deals in in his trade. There can be no objection to that clause, for a pawnbroker who takes in a pledge of stolen goods ought never to derive any property in them; the man had not that property who pledged them, and he could not derive any from him; I believe there is an old Act of Parliament which declares a pawnbroker's shop in the city of London to be market overt, and that authorizes a change of property.

Jovis, 25° Maii, 1837.

MEMBERS PRESENT:

Mr. Alderman Wood.	Lord Hotham.
Mr. R. Clive.	Mr. Estcourt.

MR. HAWES IN THE CHAIR.

Charles Knight Murray, Esquire, called in; and Examined.

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998. *Chairman.*] YOU were formerly senior magistrate at Union Hall?—I was.

999. For how many years were you in that situation?—I sat as one of the magistrates there, rather more than four years.

1000. Union Hall being one of the most populous districts attached to any police office?—I believe so; the population was nearly 300,000.

1001. Supposing the Town Hall, which is near Union Hall, could be rendered effective, and the Union Hall magistrates and the Town Hall magistrates had concurrent and equal jurisdiction, are you of opinion that it is necessary those two offices should continue so close together?—Certainly not.

1002. Do you think that one office, Union Hall, for instance, or the Town Hall, whichever might be thought best, would be sufficient to discharge the police business of the district, on the Surrey side of the water?—I think, it might, considering the diminution of the business of the office in consequence of the new Poor Law Act.

1003. Would there be any difficulty, provided Union Hall were removed considerably westward, so as to leave a portion of the Surrey business at the Town Hall, in adding to its jurisdiction a portion of Queen-square district?—I should say not.

1004. Looking at the situation of Union Hall, if removed westward and to the situation of the Queen-square Office and Bow-street, are you of opinion that the Queen-square district might be divided between those two offices, so that one might be abolished?—I think it might.

1005. Are you sufficiently acquainted with the districts attached to the Thames Police Office and the Lambeth-street Office, to give any opinion to the Committee on the possibility of consolidating those two districts into one, so that one office might then be abolished?—No, I have not sufficient knowledge of those districts to be able to express an opinion upon the subject.

1006. With regard to the number of police offices, generally, do you think the number might be diminished, supposing the police office district to remain the same as it is at present?—Yes; if the whole police district were somewhat differently divided.

1007. Can you give any opinion, considering the population, extent of district, and quantity of business to be done in the police offices, as to the number of offices that might be suppressed, or the number you think necessary to discharge the police business of the metropolis?—I think that the Queen-square Office might be merged partly in Bow-street and partly in Marlborough-street; I am not sufficiently acquainted with the eastern district of the metropolis to give an opinion upon that.

1008. On the supposition that the law was altered, and that a single magistrate had the power of doing that business which now requires the presence of two magistrates, the number of magistrates might be reduced?—Certainly.

1009. Do you think that two magistrates at each office, sitting on alternate days, would be sufficient, under that proposed change of the law, to discharge the public business of the offices?—I think it would; but some provision should be made for the chance of illness, and for allowing sufficient rest for a longer time to each magistrate; the nature of the duties of a police office requires that there should be an entire relaxation for some weeks together in the course of the year.

1010. Do you not think that that might be arranged by the two magistrates themselves?—I think it would be desirable that, during the greater part of the year, though the law were altered so that no case should require the concurrence of two magistrates, yet that for several days in every week, there should be two magistrates sitting on single business at the same time.

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1011. Supposing the law to be altered, and the number of magistrates to be reduced, could you suggest any plan by which relaxation could be accomplished?—The only plan which immediately occurs to me, is, having one or two extra magistrates who might occasionally sit at each office, so as to relieve the other magistrates.

1012. It being your opinion that some might be altogether abolished, you think it would not be expedient to reduce one magistrate at each office, or nine magistrates, but only a proportion of that number?—Just so.

1013. And that, with a view to taking a part in the business at each office, when the illness or the relaxation of a magistrate required it?—Yes.

1014. Do you think the salary of the present police magistrates, you being now a perfectly disinterested witness upon this subject, is sufficient to secure that professional character and ability which is so desirable in the discharge of the duties of a police magistrate?—I think it is of very great importance that the best men should be found to execute the duties of police magistrate, men of some standing at the bar, and of such a character as 800 *l.* a year is hardly sufficient in all cases to secure; my opinion therefore is, that the salary is not sufficient for the office, considering the importance of its duties.

1015. Your opinions of the importance and usefulness of the office, supposing the duties to be fully discharged, were fully detailed in your former evidence?—They were.

1016. Do you retain the same opinions?—Entirely so.

1017. You think it of great importance that the salary of a police magistrate should be sufficient to secure to the public adequate professional character and standing, so as to give due weight to his decisions?—I do.

1018. You are of opinion that the salary now given is not likely to draw from the bar men with any good prospect?—It is not sufficient to secure such men.

1019. Do you think it important to retain the qualification with the estate now required?—I think it quite unnecessary.

1020. Many of the magistrates have been asked their opinion generally as to the expediency of allowing, now that the metropolitan force is established, judicial and executive functions to be united in the same person; will you favour the Committee with your opinions generally on the expedience of confining the magistrates to purely judicial duties and of leaving the whole of the executive business of police, the prevention of crime, for instance, entirely in the hands of the police under its present head?—In my former evidence I expressed a very strong opinion upon the necessity of separating entirely the judicial from the executive duties of police, and I endeavoured there also to show how that object might be practically attained; I still entertain the same opinion of the necessity of such a measure, and I have not at all altered my opinion as to the possibility of its being carried into effect.

1021. Does there appear to you any reason why the office constables should not belong to the metropolitan police force?—None whatever; on the contrary, I think it would be extremely desirable that they should belong to it.

1022. Do you not think, that the having two sets of officers, with concurrent powers, for the apprehension of felons and other offenders, but under distinct control, and acting independently of each other, is unfavourable to the prevention and detection of crime?—It always appeared to me to be so.

1023. If that duty were so entrusted, do you not think there would be a more complete and speedy communication and diffusion of information than there is now over the metropolitan district?—There must be so.

1024. Do you think it would be desirable or not that the police offices should be constructed more as courts, and their proceedings rendered more analagous to courts of a higher description?—From the very strong opinion I entertain of the importance of a police office, and the great influence that it may operate on the neighbourhood in which it is situated, I am of opinion that it should be constituted in as creditable a manner as possible; that it should be a highly respectable court, in which the public may have confidence, and which may have every attribute of a court of justice.

1025. What would be your opinion as to requiring the magistrate to sit in his bar dress?—I think it would tend to produce more order and regularity, and might increase the respect of some parties who appear, indeed the majority of those who appear before police magistrates; in short, I am of opinion that every thing which tends to give the office a judicial character is desirable.

1026. What is your opinion as to the expediency of continuing the hours for business

business in the evening?—I think the evening attendance unnecessary; and I am still of opinion, from my recollection of what passed when I was at Union Hall, that it is sometimes worse than unnecessary. In my former evidence I gave my reasons for that opinion.

1027. Does your opinion as to the propriety of extending the civil jurisdiction of the police magistrates remain the same?—It remains entirely unaltered.

1028. Many complaints have been made by the public as to the evil of the present system of giving information of petty breaches of the law by informers; can you point out to the Committee any desirable means of still securing the proper execution of the law, without the inconvenience and evil attending the present system of informers?—One remedy would be to give larger discretion to the magistrates as to the amount and disposal of the fine; and another would be to give larger powers than they now possess with respect to costs.

1029. That is to say, when the minimum fine is fixed by law, and a portion of it by law must be given to the informer, you would alter that, and leave it wholly in the discretion of the magistrates?—I think the magistrates' discretion on these points should be unlimited.

1030. And you would also give a power of awarding costs against the informer, should the magistrate think it a frivolous information?—Certainly.

1031. It has been suggested, that as there are penal Acts of Parliament, there should be persons appointed to carry out the penal enactments; are you of that opinion?—It seems to be a clear principle, that where there are penal Acts, there should be some means of enforcing them; and therefore, as many penal Acts apply to offences in the prevention or punishment of which the public generally are interested, although no individual may be so affected as to be induced to interfere, some means should be devised, if possible, of establishing a respectable race of informers; at present they are a degraded set of persons, and they come into the police office or any other court, under many disadvantages; the effect of this is injurious in every point of view.

1032. What means could you suggest which should secure the execution of penal laws, and yet relieve that portion of the public which is subject to them from the evils attendant upon the present system of informers?—It is a very difficult subject; but it has sometimes occurred to me as possible that informers might be licensed; that they might give security for costs; in cases in which they fail that those costs should be rigidly enforced against them; that whenever a clear case of corruption is brought home to an informer, he should be deprived of his license, and that for minor offences in the execution of his duty, he should be liable to penalties. Whether such a system could be worked out I hardly know, but it is possible something might be founded on this suggestion. I endeavoured to raise the character of the informers in the district of Union Hall, by encouraging the more respectable, and discountenancing all who had disgraced themselves. At present many offences pass unnoticed, because, where there is no regular informer at hand, the parties are reluctant, from the odious character the name of informer has acquired, to come into court with an information. It has already been suggested by myself and others, that the statute of 18th of Elizabeth, cap. 5, against compounding informations, should be extended to informations before magistrates, to which it does not now apply.

1033. Your opinion being that the giving them an official character and making them responsible to the magistrates, would tend to prevent frivolous and vexatious informations, and yet secure the law being carried into effect in all necessary cases?—Yes; by raising the character of an informer it would remove that objection which many parties have, who are not professional informers, to laying informations, lest the name should attach to them.

1034. Would you pay such persons by salary, or allow them to obtain emoluments out of the penalties?—I think that they should in some degree depend upon a portion of the fine for their emoluments, but that they should be rendered to a certain extent independent by a salary.

1035. They might be secured a minimum income, and allowed to obtain a maximum income, at the discretion of the magistrates, out of the penalties?—Yes.

1036. Are appeals from the decisions of police magistrates to the quarter sessions frequent?—I believe not.

1037. When they do occur, are they not attended with considerable expense and trouble to the parties?—Certainly.

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1038. Has it occurred to you as a question, whether the establishment of a court of appeal from members of their own body, sitting occasionally, might be desirable?—I am of the same opinion on that subject as I was when I gave my last evidence, that it would be a very desirable measure.

1039. Do you not think that such a court would also exercise a very beneficial supervision and control over police offices, keeping their practice uniform and forming a medium of communication between them and the Home Office? Uniformity of decision would, I think, be one of its most important effects.

1040. Would not such an office afford an opportunity of relaxing the labours of the more aged magistrates, and yet preserving their usefulness to the public?—The Court should certainly be formed of the most experienced magistrates.

1041. Have you any further suggestions to offer upon this subject?—Nothing further occurs to me.

1042. Mr. *Estcourt*.] Supposing a court of appeal were to be established, as you have suggested, would that not render an augmentation of the magistrates, in point of number, necessary?—It would sit so seldom, that I think it would hardly involve that necessity. I should not contemplate that it would be necessary to call it into operation often, for the effect must very soon be, that greater uniformity of decision would be established at all the offices, and there would be less occasion for appeal.

1043. Do you apprehend that, under such an arrangement, it would be practicable to carry into effect the diminution in the number of magistrates which has been referred to in a former part of your evidence?—I think so.

1044. You have stated, in your former evidence, that you think the present salary of the police magistrates is insufficient to obtain the services of the most efficient and able barristers; are you enabled to give an opinion what would be the amount of salary that would be sufficient to attain that desirable object?—I should say about 1,200*l.* a year; if that were the salary fixed, and the magistrates were reduced from three to two at each office, the division of the salary of the third magistrate between the other two would effect that object.

1045. Do you think it important that, for the supply of police magistrates, reference should in all cases be made to members of the bar?—Certainly.

1046. From what standing do you think it would be proper to select persons to fill those offices?—If the salary is to remain as at present, it would be vain to suggest so long a service at the bar as I should be desirous of proposing, because it would be hardly possible to secure members of the bar of that standing who would take the office at such a salary; I should say there ought to be at least seven years' standing at the bar; probably ten would be better.

1047. Do you think there would be an ample supply of barristers of seven years' standing, from whom might be selected well-qualified gentlemen to fill vacancies on the police bench?—I think there would.

1048. In the answer you have given, with reference to the dispensing with the qualification as to property by magistrates, do you intend that that answer should be confined to magistrates acting in the metropolitan districts?—The salary itself seems to me an equivalent for the qualification required in the case of magistrates generally; a man in the regular receipt of a certain income of 1,200*l.* a year, is at least on a footing, with reference to qualification, with a person who has landed property to the amount now required by law.

1049. *Chairman*.] The duties of the clerks of the offices are very onerous, are they not?—They are.

1450. Do you think, considering the various duties they have to perform, preparing business for the magistrates, frequently being enabled, from their knowledge of business, to spare the magistrates altogether the investigation of the case, they are adequately rewarded?—I think not, so as to secure proper men for the office.

1051. On the same principle on which you would augment the salary of the magistrate, you would that of the clerk, probably, to secure efficient persons, and persons of character and ability?—I would.

1052. So as, as far as possible, to raise the character and qualification of all persons concerned in the administration of justice in the police offices?—Certainly.

1053. To whom is the clerk responsible for the proper discharge of his duty?—I apprehend to the magistrate, because the magistrate is responsible for every act which passes through the office.

1054. Is the police magistrate directly responsible to the Secretary of State?—It has been always so understood.

1055. Can

1055. Can the Secretary of State remove him?—The removal would rest with the Secretary of State, but I should suppose he could not be removed except for some decided malversation of office. *C. K. Murray*, Esq. 25 May 1837.

1056. Mr. *Estcourt.*] Is it absolutely necessary that a police magistrate should be in the commission of the peace, sealed by the Lord Chancellor?—Yes, he is appointed a police magistrate, being already a magistrate for Middlesex and Surrey; those are the terms of the Police Act.

1057. *Chairman.*] The Secretary of State can, if he please, advise His Majesty to withhold the salary of a police magistrate, can he not?—The salary appears to be secured by the Act as long as the appointment lasts.

1058. The Secretary of State has power to discontinue any of the police offices, and to make such regulations in the attendance of the justices as may be deemed expedient?—Yes, by the Act.

1059. So that, practically, perhaps, it may be considered that there is a responsibility to the Secretary of State?—It appears to be so.

1060. Would you directly increase that responsibility, or not?—Having reference to the answers I have given to some of the previous questions, upon the point of separating the executive from the judicial duties of a police magistrate, supposing that separation to be effected, I should conceive it would not be necessary to extend the power of the Home Office over the magistrate, but that it might even be limited. It seems to me, that the control which the Home Office exercises, or assumes to exercise, over the police magistrates of London, is dependent in some degree upon the circumstance of the police magistrate representing the executive as well as the judicial branch of the police. If, therefore, the whole of the executive duties of the police were thrown upon the Police Commissioners, they would, of course, remain under the immediate control of the Home Office; and I think the police magistrate, as distinct from the police commissioner, should be placed on the same independent footing, as nearly as may be, as the judges.

William Lambert Jones, Esquire, called in; and Examined.

1061. Mr. Alderman *Wood.*] YOU are one of the Common Council of the City of London?—I am. *W. L. Jones*, Esq.

1062. Have you paid considerable attention lately to matters connected with the lighting, watching and police of the city?—I have; my official duties have called my attention to it very much.

1063. How long since was a Bill brought into the House of Commons by the almost unanimous consent of the Common Council?—I think it was in 1832.

1064. Can you tell the Committee why that Bill did not become an Act of Parliament?—It was, I believe, entirely from the opposition that was given to the magistrates having more power in the management of the police than the Common Council thought they ought to have.

1065. Had they not agreed to the Bill?—Every part entirely, except that clause.

1066. It passed the House of Commons?—It did.

1067. Was it stopped in the Lords?—It was.

1068. Do you recollect the clause on which it was stopped?—No; it was very much talked of; I was requested to appear at the bar of the House of Lords to prove the preamble of the Bill.

1069. Was the control any more than the common control magistrates have over constables?—Certainly not; the clause was put in by the Chairman of the Committee of the House of Lords, and, therefore, as that clause could not be withdrawn, the direction of the Common Council was, that they should withdraw the Bill.

1070. What is the present state of the police of the city?—I should say it was any thing but good, as respects the night police; the day police is very much improved; but the night police, as respects its arrangement and the parties employed, is not good, there is such a mixture of individuals; and looking at the formation of the city, there is nearly twice the ground gone over which would be necessary with a well-regulated police. Here is a street with two men going up and down it, that street dividing two wards, and each being patrolled separately; many of the streets in the City of London are very narrow, one portion belonging to one ward and one to another; two men are actually doing the same thing, in consequence of this.

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1071. Are the men called constables?—Watchmen.

1072. Are there orders by authority of the ward, that the watchmen are to continue to do their duty in their own wards?—They are confined entirely to their own wards; and I have known instances where a robbery has been committed or a person knocked down, and such has been the pertinacity of the watchman, that he would not go across the street to do what was necessary, because it was out of his ward.

1073. Are many of the men who are employed inefficient?—A great many of them are very inefficient; I can only ascribe their state of inefficiency to a very remarkable circumstance. When the police was agitated, there was a very great wish to have a review of the whole troop of the city; but the wards resisted it, they would not show them up in Guildhall, to show what sort of a regiment they were.

1074. Did not an absolute order go from Guildhall to the wards, directing those men to attend muster in the Guildhall?—Yes, certainly; and that was resisted by the authorities in the wards.

1075. Do you know what is the amount paid by the inhabitants of the City of London for that watching you have described?—The assessment for the whole of the city would be on about 800,000*l.* a year, which, upon the present rate, is very nearly 40,000*l.* a year.

1076. Can you state the number of men who form the party to which this expense is applied?—I think it is very nearly 500; there are 316 beats, and we calculate three men to two beats.

1077. Can you state whether the city was measured, so as accurately to know the number of yards each man would go over in his beat?—Yes, and the distances were taken down from point to point; I think it was 316 yards on the average.

1078. Does the act of Common Council, which authorizes the raising of the money, say that it shall be for any other purpose than that of watching?—And the providing one or more beadles for each ward.

1079. Is there any expense, within your knowledge, that is taken out of that assessment, or out of that rate called the watch-rate, which does not apply to either watching or beadles?—Yes, payment of ward-clerks frequently, and various incidental expenses for providing of other things which do not apply; there are many sums appropriated not strictly legal.

1080. Supposing any inhabitant to appeal to the magistrates upon that rate or assessment, would they have power to quash such a rate, on the ground of its having been applied to a purpose not under the Act?—I have often thought that, upon an appeal, the magistrates would quash it, knowing there are many appropriations the Act does not justify.

1081. So that considerably less than the 40,000*l.*, or the sum now raised, would be sufficient to carry on a very effective police?—The calculation in 1832 was, that it would be, looking at the various charges the citizens are put to under the present system, such as finding substitutes for constables, that a less quantity of men to do the same duty, and the proposal that was then made by the corporation to relieve the citizens, by paying one-sixth of the gross sum, the saving to the inhabitants would be something about 11,000*l.* a year.

1082. Are there any parts of the day or night in which the city have no police whatever in the streets?—I believe there is in the morning, and in the commencement of the evening, between the night watch coming on and the day police going off.

1083. Do you know whether it amounts to as much as two hours at any one time?—It did amount to more than two hours, but it has been better regulated in most of the wards, I believe, now, but still it is upwards of an hour, or an hour and a half.

1084. So that Fleet-street or Cheapside would be without any kind of police or watchmen at all?—Yes, so much so, that I know in the ward to which I belong, we have had evening patrols for that interregnum between the one going off and the other coming on; they are called evening patrol; they patrol the time after the day police go off till the evening watch come on.

1085. *Chairman.*] Your police system is of very ancient date, is it not?—Yes, very ancient.

1086. Has it at all kept pace with the population and property of the city?—No, I should say certainly not.

1087. It does not interfere to protect the property or population outside the city walls?—Outside the city walls is in the city also.

1088. Beyond the strictly corporate jurisdiction of the city it extends no protection to property?—Certainly not.

1089. There a different jurisdiction exists?—Yes.

1090. Do you think there is any reason why there should be two distinct jurisdictions for a matter of police?—The city has always been jealous of its ancient rights; I think there would a vast deal of difficulty to extend it beyond the city's jurisdiction.

1091. Do you think there is any good reason for maintaining a right of that kind where it tends to give immunity to crime?—I think that the reason perhaps would be, that there is a very strong feeling in the city as to the jurisdiction of the magistrates, and if that was extended, their jurisdiction would not go with it perhaps.

1092. Of what magistrates do you speak?—The city magistrates.

1093. Do you think two distinct jurisdictions existing in the same metropolis favourable or unfavourable to the repression of crime?—Certainly, it would be better if there was one uniform system, but it may be very questionable whether there should not be two jurisdictions.

1094. Will you state how you can have a good uniform system under two separate jurisdictions?—There might be a concurrent jurisdiction acting upon the same system, a system being laid down; if you go into Surrey, there is the metropolitan police acting there, but there is not a concurrent jurisdiction with the magistrates of the county.

1095. You are aware that the Metropolitan Police force is under the immediate control of the Home Office?—Clearly so.

1096. The magistrates generally of the counties of Middlesex and Surrey have nothing to do with the prevention of crime?—Certainly.

1097. Do you see any reason why the same system of police should not be extended throughout the metropolis without interruption, beyond the prejudice in favour of ancient corporate rights?—Were it to be created anew, I should say, that one system of police for the whole would be best; but, looking to the ancient rights of the City of London, I think there might be one system created, and that a concurrent system beneficial to the community in general.

1098. Will you favour the Committee, in detail, with your opinion of the concurrent jurisdiction you propose as a substitute for the present system?—Supposing there was an apprehension of any riot, the Metropolitan Commissioners might communicate with the city magistrates and act under the same jurisdiction.

1099. Supposing the magistrates differed as to the apprehension of riots?—I should hardly imagine a case in which they could.

1100. The benefit of the public should be an object paramount?—Certainly.

1101. If the benefit of the public required the co-operation of the whole police of the metropolis, that would be desirable?—If the benefit of the public required it it might be so, but I think the city might be as well protected by a concurrent jurisdiction, notwithstanding.

1102. As to the conduct of the police constables, for instance, would it not be desirable that one system of rules and regulations, and pay and clothing should be adopted, and could you insure that under two jurisdictions?—Yes, I think that might be very easily done as to clothing, pay and every thing else, so as to have it uniform; but the jurisdiction of the magistrates may be kept distinct notwithstanding.

1103. Is not the river placed under the control of police magistrates, who are not responsible to the city authorities?—Certainly, they have the jurisdiction.

1104. How is it that the corporate rights in that respect have given way, that they have not extended to the protection of the public on the river, while they have been so jealous of the public on the land?—I can only account for it by the circumstances, that, at the time when the Thames Police were created, there was so much robbery carried on, that the Government thought it beneficial and proper that the Thames Police should be established specially for the protection of the river, which had not taken place before; it was an appointment of the Government without any interference of the corporation.

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1105. The property was that of the inhabitants of London?—Yes, of the traders of London.

1106. How was it that they did not think it necessary to interfere, possessing a corporate jurisdiction over the river to a great extent?—That is a question which did not occur, to my knowledge, but I believe the origin of the Thames Police was at the suggestion of Government.

1107. Do you think the public has at all suffered by diminishing the extent of its corporate rights?—It never existed in their hands.

1108. Do you think, by the establishment of the Thames Police, the inhabitants of London have been at all damaged?—Certainly not; but that has taken nothing from them.

1109. Did it not, to a certain extent, interfere with corporate rights?—It certainly did with their police jurisdiction, but it never had been created.

1110. Though there had been great losses of property, by plunder, belonging to the citizens of London, the corporation had not interfered to correct them?—I am not aware that they had.

1111. The Thames Police works well, does it not?—I have always heard that it works very well; they are very attentive.

1112. Mr. Alderman *Wood.*] There was no police upon the Thames, either from the Government or from the city, previous to the establishment of the present force?—No.

1113. *Chairman.*] Some time back, some inquiries were made of the Commissioners of Metropolitan Police, of the probable cost of watching the City of London?—Yes.

1114. Are you aware what was stated to be the total cost of the London watching?—I think it appeared that that which at that time cost 37,000*l.*, would be amply or well done for 32,000*l.*

1115. In addition to 32,000*l.*, is there not a considerable sum paid by the corporation strictly as such?—Yes.

1116. The whole rate amounts to about 36,000*l.* a year, and the amount paid by the city, strictly as such, to 9,000*l.*, does it not?—Including the Marshalsea, I suppose it amounts to that.

1117. Amounting in the whole to 41,000*l.*?—Yes.

1118. Do you know what was the estimate for two divisions of the Metropolitan Police to perform that duty?—I think it was 32,000*l.*; but that did not include what the Metropolitan Commissioners called the staff of the city.

1119. It was stated by the Metropolitan Police Commissioners that that service could be performed for 24,600*l.*; can you at all confirm that?—I did not recollect that the estimate was so low; I recollect one of the Metropolitan Commissioners was at Guildhall, and that he made a return; I know our own calculation was, keeping up a certain class of the Lord Mayor's establishment, that that was something like 32,000*l.*

1120. The keeping up a part might be necessary for the state of the city, but not for the protection of property?—Embracing both.

1121. Are you aware of the total saving which appeared by deducting the expense of the Metropolitan Police force to perform the same duty which the city force now does, from the gross cost of the city police?—I am not aware of that calculation; but from our own calculation, we conceived there would be 11,000*l.* a year saved to the citizens of London.

1122. Are the rate-payers of the city well contented to pay so large a sum for watching when so much smaller a sum would effect the same purpose?—I should say that the great body, which embraces the largest portion of property, perhaps would be in favour of letting the thing stand as it does; but that, numerically speaking, the population would be in favour of the new police decidedly.

1123. The public would be in favour of the watching being conducted as economically as possible, provided it were equally efficient?—Yes, no doubt.

1124. You have no idea that if it were conducted by the new police, it would be conducted less efficiently than it is at present?—Certainly not; but still there is the feeling of the jurisdiction.

1125. You are aware that there was a very strong feeling against the Metropolitan Police when that was first established?—Certainly.

1126. Are you aware of a general feeling in favour of that force at present?—Yes; in the parish of Islington, where I reside, out of town, there was a very strong

strong feeling against that force; but no measure has worked more to the satisfaction of any parish than that has to the satisfaction of the parish of Islington.

1127. Is it not probable that the same results, namely, economy and protection of property, would bring about the same change of opinion in favour of the Metropolitan Police, were it extended throughout the City of London?—As to the system, I have no doubt about it; but I think there would be such a reluctance to give up the jurisdiction, that the general body of the inhabitants would sooner let the system remain than interfere with the jurisdiction.

1128. Mr. Alderman *Wood.*] During the contention there has been in the city about establishing a more regular police, whether that the night and day police should be alike, and there should be one system, have the inhabitants at all come forward to encourage such a measure?—No, not to any extent.

1129. Have they not been told, in various instances, of the enormous expenditure they were put to, and that the reduction would be very considerable, namely, about 11,000*l.* a year, and have they not still remained without any remonstrance or any desire for an alteration?—Certainly.

1130. With regard to throwing it into the hands of the Commissioners of the Metropolitan Police, do not you think it might be done by an establishment under the same system within the city, and give every possible satisfaction that it could under the management of the Commissioners of Police?—I certainly do; I have stated before, that I think a concurrent jurisdiction, under the same system, conceiving the system of the Metropolitan Police a very good one, would be the best plan for carrying it into effect.

1131. When you were asked as to the estimate of the Metropolitan Commissioners, amounting to 24,000*l.*, you were not aware, perhaps, of the manner in which they divided the different districts within the city?—No, I was not; we took it upon the districts we formed ourselves.

1132. You were not aware of the mode in which they proposed carrying it into effect?—No.

1133. *Chairman.*] The proposed police, belonging to the city, was intended to be under the power of the Court of Aldermen, was it not?—So far as that they were to have the power over the police substituted for the watchmen.

1134. Was it intended to increase their patronage?—No, that was still to remain in the hands of the Common Council, and the Common Council did wrong, I think, in attempting to oppose the jurisdiction of the magistrates, for the police ought, in every place, to be under the magistrates.

1135. Mr. Alderman *Wood.*] As to the selection of them, that was still to remain in the hands of the Common Council?—Yes.

1136. And even the 100 men they had the power of appointing they were willing to give up to the Common Council?—Yes.

1137. Lord *Hotham.*] By whom is this patronage exercised?—It is exercised by the Common Council and partly by the Aldermen; but the Aldermen seldom interfere.

1138. Is it divided among the Common Council, or is it exercised by them as a body?—It is exercised by them in their meetings once a fortnight, or once a month; they exercise jurisdiction over the watch and the beadles; and if there is a vacancy, the beadle reports to the Common Council that they want an extra man, or a new man, and then the parties come forward with petitions from the inhabitants. I believe it is a measure more taken up by the inhabitants themselves; they get hold of a man who is out of employment, and, thinking he will do for a watchman, they recommend him; and they pay attention to the inhabitants because they are their constituency.

1139. Mr. *R. Clive.*] It relieves the poor-rate perhaps?—No, it does not affect that at all.

1140. Mr. Alderman *Wood.*] In the ward to which you belong the appointment of watchmen is entirely in the Common Council; the Alderman does not interfere?—Just so.

1141. What class of men do you take, generally speaking, in your ward for watchmen?—We take none above 35 years of age, in the first place, and I think nothing under five feet eight in height.

1142. From whence do you take them?—Generally from the ward; one or two have been soldiers who have been recommended to us.

1143. Have you not given generally the preference to men who have been in the army?—Generally so; we have several good men who have been in the army.

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1144. Mr. *R. Clive.*] Is that course pursued in the other wards?—No; I cannot say that.

1145. *Chairman.*] Will you explain more fully what you mean by a concurrent jurisdiction?—My view is, in case of any emergency, any alarm of riots, for instance, that they should have a concurrent jurisdiction as to the exertions by each body.

1146. Mr. Alderman *Wood.*] Do you mean by sending a force, if necessary, from the county into the city, or from the city to the county?—Yes.

1147. Supposing a riot was outside Temple Bar, you mean that the city men should be taken out, if necessary, to assist?—Yes, and the same that the men from the county should be brought into the city.

Mr. Alderman *Venables*, Examined.

Mr. Ald. *Venables.*

1148. Mr. Alderman *Wood.*] THERE has been a nightly watch committee formed within the last few years, has there not?—The nightly watch committee has been in existence about ten years; in the year 1825–26, when I was Lord Mayor of London, my attention was particularly drawn during my occupation of that office, to the very defective state of the nightly watch, and I drew the attention of the Common Council to it; in the year 1827, as soon as I was out of office, certain resolutions were passed, in which Mr. Alderman Wood lent great assistance, but which were very pertinaciously resisted on the part of the majority of the Common Council in the first instance, but which were ultimately carried; I wanted to establish a completely different system from that which had previously prevailed; previous to that, each ward had not only selected their own watchmen, but they had been under no control whatever, except what they might accidentally receive from the deputy and Common Council of the ward, separately; they had no superintendence, and, so far as I understand, they had no controlling officer except the beadle; the consequence was, that in many of the wards there was very great neglect of duty on the part of the watchmen; very inefficient persons were selected; and, while in some of the wards better order was kept, in some others there was a very great neglect of duty, and in some instances much to be complained of; there were watch-boxes all over the city, which were at length given up, and a committee was ultimately appointed, to which each ward was called upon to report, and to lay their watch-house books before the committee every month; in consequence of the part I took in it, I have been chairman of that committee; I have had very great difficulties to encounter in consequence of the continuance of the system, which I still consider to be exceedingly vicious, and perhaps incapable of further improvement than it now receives; in consequence of the exertions of the committee and those made in different wards, I think the system prevailing in the city of London is in its effect extremely good at present, but then it is very cumbersome, it is very extravagant, and there is not that co-operation with the daily police, without which it never can be perfectly satisfactory; there are such powers given by the local Act of 10 Geo. II., which is the statute by which the nightly watch is regulated in the City of London, to the local authorities in the ward, that it is extremely difficult to manage them by any authority derived from the Common Council; it is only by reporting where there is any contumacy, by the local authorities, to the orders of the nightly watch committee, that we can bring them to any order, and there are continually negligences happening in the wards, which have been managed well for a series of months, and years perhaps, by the attention which has been given by two or three members of the Common Council, and then the ward has fallen into neglect; and I am certainly of opinion there does require a change in the system. I have been in a minority in that committee all along, but I have always strongly recommended that there should be a union of the day and night police, that the nightly watch and the day police should be assimilated, and should be under one management. I have with me a paper, which, with the permission of the Committee, I will put in; which contains the resolutions of a committee which sat in the year 1830, and which recommended certain improvements, which were not adopted precisely as I wished them, but which were adopted by the Common Council. It will be there found that we recommended the assimilation of the whole police establishment in the city, as connected with the regular day and night duty; that it should

should be placed under a system of management; that it should be under a committee or commission, consisting of the Lord Mayor, all the aldermen for the time being, and one councilman from each ward, to be annually elected from the Court of Common Council. We recommended that, instead of the subdivisions of the wards which now exist, amounting, I think, to 27, the city should be divided into six districts, the Mansion-house district, the Tower district, the Bishopsgate district, the Cripplegate district, Holborn district, and the Blackfriars district, in each of which stations there should be establishments and night charges received. The management of the police we recommend in this paper, which, if it is the wish of the Committee, I will put in as explanatory of my evidence, is certainly very similar to that which has been adopted by the Government since in the Municipal Corporation Act; and that gets rid of one inconvenience we have suffered under, which is the multiplication of watch-houses; we have 26 or 27, which are maintained at a considerable expense of money, but which are altogether inadequate for the purpose; in many of them there is not a single person for weeks and months together; in others, there are not those means of separation of persons charged with offences, or for persons under particular circumstances, which there should be; we conceive, that if we had six, we should have a competent watch-house, and that the expense would be less, and that it would be managed better; that there should be an officer appointed over the whole, and that there should be inspectors and superintendents very much after the same plan as we have in the general police of the metropolis. I do not know that I ought to make any complaint of the local authorities of the various wards in the City of London, for they have exerted themselves very much, and there has been great improvement in regard to the efficiency of the nightly watch; but the truth is, having all of them some authority in the respective wards, they are certainly very reluctant to give up that authority. In the election of constables for the various wards, it is incumbent by law that a certain number of constables should be elected for each ward, amounting to no less, with the extras, than 400 men; very few of the persons so elected serve in their own right, so that it operates as a tax of between 4,000*l.* and 5,000*l.* a year on the inhabitants of London, and we think without producing any correspondent effect. We have proposed that the number of constables should be greatly reduced, and their authority in some respects remain. By the 10th Geo. II. there must be in every watch-house a constable sit up for the night, and it is incumbent upon him to go through his ward twice in the night. We have since appointed superintendents of the watch, so that it is not necessary for him to go through, and in fact he ought to be at the watch-house. But the paid constables now say, when we accuse them of neglect, "We were going about our ward," so that we have no means of convicting them, and yet we are persuaded they are off the duty. From the very great experience I have had, for I have seldom neglected attending each month, I am quite of opinion the circumstances of the City of London are peculiar, both with regard to the day and the night police; the very large quantity of property that is found to be concentrated in particular places, take for example the establishments in Bread-street and immediately surrounding St. Paul's church, where there are goods amounting to 300,000*l.* or 400,000*l.*, and probably extending to several stocks to that amount within a small distance, it is requisite there should be great confidence in the arrangement of the nightly watch, and there is very great confidence in the inhabitants generally; very few burglaries comparatively take place. Then there is the circumstance of so large a number of the inhabitants of London leaving their residences for the night, and in the day-time there is much exposure of property; the large quantities of property concentrated in the City of London, as compared with any other part of town, render that of more importance than any other part.

1149. How does the absence of the proprietors of the property increase the difficulty of the nightly watch?—If a proprietor sleeps on the premises, with his clerks and his servants, it is well known that that is the fact, and it increases the vigilance of all persons connected with the watch, but it also is known to the thieves, and it deters them. I do not mean to say, that the moral obligation of the police is increased by it, but I think the thieves are more likely to attempt a house under those circumstances than where it is well guarded, and therefore I think there is a more vigilant police, and, in some instances, more numerous.

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1150. Supposing they merely lock up their warehouses, it requires more vigilance to watch them?—Yes.

1151. Have not the inhabitants in some instances expressed their satisfaction with the present mode of watching on that account?—Yes, that has a very great effect; it is one of the greatest difficulties I have had to encounter in carrying into effect improvements; they say, "Let us be safe; we have so large a stock, we are satisfied as it is."

1152. Have you in the consideration of this subject, found the inhabitants willing in any degree to make this change which the Committee propose; have they had any meetings in their wards expressing a desire for this change?—No, I am not aware that they have.

1153. Have they not, on the contrary, had meetings resisting the measures proposed for change?—Yes.

1154. What was the last return of the expenses to the inhabitants of London for watching?—In the year 1835 the expense for the nightly watch, as drawn from the records given in by the local wards, was 34,924*l.* 18*s.* 9*d.*; for the day police, 7,262*l.* 12*s.* 9¼*d.*; for the Marshalsea and marshals'-men, which are a section of the police, 1,675*l.* 6*s.*, making together 43,810*l.* 16*s.* 3¼*d.*

1155. What was the amount calculated on for the night and day police when the Bill was applied for to Parliament in 1830?—We thought we should save 11,000*l.* By the Statute to which I have before adverted, the 10th of George II., the Common Council have the authority to determine and direct what sum of money shall be raised and levied on each respective ward for the next year, and the practice is for the local authorities to calculate what they will require, and then they take a round sum; take, for instance the first ward, I come to the ward of Aldgate; the court directed the sum of 1,500*l.* to be assessed upon that ward; it may happen that that ward does not spend all that money, even if it collects it, but there will be some deficiency; they made an assessment for 1,500*l.* in the year 1835, and the ward of Aldgate expended only 1,383*l.* 5*s.* 2*d.*

1156. How do you account for the difference?—They did apply to raise the 1,500*l.*, and they made out a rate with a view to 1,500*l.*, but they had defaulters; they were not bound to raise the whole; the next year they might not ask for more than 1,400*l.*, probably.

1157. Is the sum you have stated to be the cost of the city police, day and night, a fair average of the annual expense?—Of the public expense I think it is.

1158. Are there not, in addition, a great number of private watchmen in the city?—Undoubtedly there are.

1159. Does this item comprehend all the expense of each ward incident to the police and watching of the city?—I think it does, except those watchmen or street-keepers that are employed in some streets by the subscription of the inhabitants.

1160. Are the beadles paid out of the nightly watch-rate?—They are.

1161. Do you think you can furnish the Committee with an estimate of the actual cost of the police in the city; that is to say, what sum is paid in addition to that raised by the city by rates, and paid out of the city cash, in addition to monies paid by private individuals?—I will endeavour to procure information to enable me to furnish that account; that prevails all over the metropolis, wherever there is any property, and in the city it is very much reduced of late. I do not think there are half the number there were 10 years ago.

1162. Can you inform the Committee the number of hours, and the times at which the city is left altogether without police, either as watchmen or policemen?—I should say .they were never left without; there are patrolling watchmen appointed, who come on before the police go off; the whole strength of the nightly watch does not come on, but a part of it does; for instance, the committee direct that patrolling watchmen shall be appointed in every ward, not exceeding one-fourth nor less than one-eighth of the number of the ordinary watchmen, and that their several respective divisions shall be defined; they come on duty in the winter as early as five o'clock, and in the summer at no time later than six o'clock.

1163. Has every ward some of them?—Yes.

1164. How

1164. How comes it, then, that in Fleet-street, as the daily police leave at seven, there are two hours without any persons being seen there?—I will explain to the Committee how that may happen; it may happen in Fleet-street, for instance, there are 12 watchmen, they might not appoint more than one-eighth, that would be one and a half, there would be only two at the most, where there would have been 16 in their full strength.

1165. Therefore the streets may be left without that guard to which they are entitled?—They are not so well protected as I should wish to see them; I am very desirous of seeing that improved.

Jovis, 1° *die Junii*, 1837.

MEMBERS PRESENT.

Mr. Clive.	Lord Hotham.
Mr. Elphinstone.	Mr. Marshall.
Mr. Estcourt.	Mr. Alderman Wood.

Mr. HAWES IN THE CHAIR.

John Buckle, Esq., called in; and further Examined.

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1166. *Chairman.*] IN your former evidence you stated that you saw no reason why summary jurisdiction in the cases should not be exercised by the magistrate in the first instance; but you also added, that for extraordinary cases you would suggest some specific provision; will you favour the Committee with the provision which you have alluded to?—If the Committee will give me leave, I will read the clause. [*The witness read the same*; *vide Appendix.*] Now in the first part of this clause a power is given generally in cases of simple larceny, or of stealing from the person without violence, and the punishment is limited to twelve months' imprisonment. In my former evidence I stated that I saw no objection to intrusting a police magistrate with the same power which is given to recorders in cases of simple larceny, because I thought persons might be selected for the office as competent to exercise such a discretionary power as the recorders; but in order to keep within the present limits of punishment in cases of summary conviction for felony, and to avoid any objections to the exercise of a new power, I have drawn the clause, limiting it to that which they now have in other cases, namely, twelve calendar months' imprisonment. Then the special provision which I alluded to is that which follows, and there it is left entirely to the discretion of the magistrate, whether he shall send the case to the sessions or not; and I may observe, that this provision is similar to that which is introduced into Sir Robert Peel's Act, where the power of summary conviction was extended to twelve months' imprisonment; that therefore is a precedent. I have not thought it necessary to draw out any other formal clauses, which would only increase the bulk of the Report of the Committee; but I propose that the same enactment should be made as to every principal in the second degree, and every accessary before the fact, and every person who shall receive such property, knowing the same to be stolen. I also propose to add a power to the convicting justice to restore the stolen property, as in Sir Robert Peel's Act; I mean the 7th and 8th of George 4, chap. 29, sec. 32; and a power to determine the right of possession between the complainant and the party accused, in case of acquittal.

1167. Why would you limit the punishment of an offence under summary conviction to twelve months' imprisonment, which, when made the subject of indictment, may be subject to a much heavier of punishment?—I have just stated why I propose twelve calendar months as the extreme limit in those cases of summary conviction; I stated the other day that I thought persons might be selected for the office of police magistrate in London, no less competent than recorders, to exercise the discretionary power intrusted to recorders; but in order to keep within the present limits of punishment after summary conviction, and consequently to lessen, if not to avoid, any objections founded on the feeling in favour of the jury system, I propose by the present clause that in all cases where it shall appear that such punishment is not sufficient, the case shall be sent to the sessions, and that at the sessions, after a trial by jury, every greater punishment shall be awarded.

1168. In the case of juvenile offenders who more especially may be brought under the summary jurisdiction of the magistrates under those clauses, do you or do you not think it desirable that the magistrate should have the power to sentence to a long period of imprisonment, regarding imprisonment of course only with

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a view to the prevention of crime, and keeping in mind that short imprisonments under the present system are productive of evil, and, even under an improved system, could scarcely be productive of much good?—In my opinion no punishment exceeding 12 months could be productive of good, and in the present state of our prison discipline I do not think any punishment going up to that limit can be productive of good.

1169. You think then, upon an improved system of prison discipline, that a period of imprisonment for 12 months in the case of a juvenile offender would be sufficient for all the purposes of reformation?—I think more than sufficient, and I never would sentence a juvenile offender to 12 months' imprisonment.

1170. Not on the supposition that the imprisonment implied both instruction and moral training?—That is quite a different thing; I spoke with reference to our present prison discipline.

1171. The question was asked with reference to an improved system of prison discipline, which you have insisted upon in the work which you have written; upon the supposition that such a punishment was introduced with reference to juvenile offenders, what would be your opinion as to the value of short or long imprisonment?—If the whole plan of prison discipline were submitted to me, I should be prepared to give a definite answer to the question.

1172. Are you acquainted or not with the report of the inspectors of prisons on juvenile offenders?—No, I am not.

1173. Supposing the system of prison discipline were something similar to that which exists in the houses of refuge in America, which consists of moral training and instruction in trades up to a certain age, and subsequent apprenticeship under the authority of certain legal guardians, what then would be your opinion as to the value of short and long sentences of imprisonment with reference to young offenders?—I think then that a long imprisonment might be very advantageous.

1174. Provided, perhaps, that the mitigation of sentence was always placed in the hands of some competent authority, so that the discharge might take place upon well-attested reformation?—Wherever imprisonment is made the means of moral instruction, there a long term of imprisonment may be highly advantageous, and I am not prepared to assign a limit, it must depend upon circumstances; but, in the clause which I have here drawn, I am looking to the state of things in this country and at the present time.

1175. Mr. *Estcourt.*] How do you define a young offender?—I offer no definition at all; but I apprehend that when juvenile offenders are spoken of, they are supposed to be within the age of 18; I believe that the Criminal Law Commissioners have proposed an earlier age, in consequence of various statistical returns that were made to them; so I was informed by one of the Commissioners.

1176. *Chairman.*] They limit the definition of juvenile offenders to criminals under the age of 15?—They do; but in the clause which I have drawn, there is no reference whatever to juvenile offenders, or to age; if the object is to provide for juvenile offenders only, it appears to me sufficient to select that class of offences which are generally committed by such offenders.

1177. Mr. *Estcourt.*] Does not your experience teach you that, amongst the offenders under the age of 18, some of the most incorrigible rogues in existence may be classed?—Certainly; and I will mention an instance which came within my own observation at the last Worcester Sessions; the prisoner was stated to be under 18 years of age, and his offence was this: he was indicted for receiving stolen goods, and it came out in evidence that he had in the first place seduced the thief to rob his employer, and to commit a series of petty thefts in his shop; that afterwards the thief, who was a boy much younger than himself, declined to proceed any further, upon which the prisoner, (the receiver of the stolen goods,) said, If you refuse to bring me any thing more, I shall tell your master what you have been doing,—thus acting upon the boy's fears, and endeavouring to compel him to continue in a course of felony by the exercise of that power which he had gained over him from the original seduction. Now I cannot conceive a more aggravated offence than that; it was an offence which I thought so great, that I allowed the law to take its full course; I sent him out of the country for 14 years; but, in consequence of his age, the sympathies of certain persons in the city were excited in his favour, and a petition was sent to the Secretary of State, and the petition was transmitted by the Secretary of State to me, requesting my opinion upon it, and my opinion was given with a statement of those facts which I have just related to the Committee; the result was, that the Secretary of State did not think it a case in which the punishment should be mitigated, and the law took its course; I only

I only regretted to see the sympathies of well-meaning persons, some of them clergymen in the city, excited upon such an occasion.

1178. *Chairman.*] Have you any other clause to suggest in reference to the subject of the inquiry before the Committee?—The only other clause which I have drawn, is one giving the right of appeal. In my former evidence I stated that I thought an appeal was on all occasions desirable, if not attended with great inconvenience; but that I was not then prepared to suggest any appeal which would not be attended with inconvenience; I have thought the matter over since, and it has occurred to me that the most unobjectionable mode of appeal is that which is embodied in this clause. [*The Witness read the clause; vide Appendix.*] Now the Committee will observe, that the effect of this clause is not to give an appeal from the police magistrate to the justices of the sessions, but in certain cases to have the facts submitted to a jury; so that the only question at the sessions will be, whether the prisoner be guilty or not of the offence in question, and that to be determined by a jury; if the jury determine that the prisoner is guilty, then the adjudication of the police magistrate is confirmed, otherwise not. It is not, the Committee will observe, an appeal from one magistrate to a body of magistrates, but an appeal from a police magistrate to a jury, under the direction, of course, of the Chairman, or other functionary presiding at the sessions.

1179. You would allow new evidence to be introduced?—Certainly; I should put it upon precisely the same footing as any other appeal, except that it is an appeal, in fact, to a jury upon the question of guilty or innocent; this mode of appeal was suggested to me by the last Highway Act; the Committee are probably aware that by the last Highway Act, if the order of the justices is thought unsatisfactory, an appeal is given to the sessions, and a jury is empanelled to try the question, to draw a conclusion from the facts submitted to them; this appears to me to be the least objectionable appeal that can be proposed, having regard to the feeling in favour of trial by jury.

1180. Mr. Alderman *Wood.*] If that clause applied to the country at large, and was not confined to the metropolis, what would the operation of that be in the case of imprisonment for two months only, when the appeal could not be heard during that time?—I have provided that where the punishment adjudged by the single justice shall exceed two months, there shall be a right of appeal; I do not propose to give any right of appeal where there is a very short imprisonment; I have inserted "two calendar months," because that appears to be sufficiently short; it might be one month or six weeks.

1181. In the case of three months' imprisonment, the party would have undergone two months, perhaps, of his imprisonment?—Just so; but that would not happen in London, and it is more immediately with reference to London, I believe, that this inquiry is taking place.

1182. *Chairman.*] Have you any other observation to make?—I have not added the ordinary clauses as to notice of appeal, recognizances, &c., which might as well be taken from Sir Robert Peel's Act as from any other source. I observe, that with regard to the plan which was proposed in number 877, I stated, "You would still be throwing aside the present grand jury system, and you would have no grand jury." Then the question was put to me, "You are not disposed to regret that circumstance?" and I answer, "Certainly not." I wish, connected as I am with the local administration of justice, to assign an explicit reason for that opinion; it appears to me that the object, and the only object, of a grand jury is this, that no man shall be put upon his defence until a sufficient case has been made out against him; and it appears to me, that after the offender has been imprisoned for several weeks or months, it ought not to be left to a secret tribunal to determine whether there is a sufficient case against him; if there is not a sufficient case against him after the long imprisonment, the public ought to know why there is not—how it happens that he has been imprisoned for a long period without any legal case against him. That is the reason for the opinion I there expressed with regard to grand juries.

1183. Do you attach much value to the grand jury as an instrument in the administration of criminal law?—For the reason I have just assigned, I cannot do so.

1184. Is that reason founded upon the competency or incompetency of the individuals, or the secrecy of the tribunal?—It is founded entirely upon the nature

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of the tribunal; with regard to the competency or incompetency, I expressed no opinion whatever. I apprehend the grand jury of a county is a highly intelligent body of persons, but the reason I have assigned is founded upon the nature of the functions which they exercise; it has nothing to do with the persons who exercise them. A man is charged, a magistrate determines that he shall be imprisoned, he is imprisoned for weeks or months, and then comes the secret inquiry whether he shall be put upon his trial.

1185. That inquiry being confined, is it not, to evidence on one side, whereas the committal by the magistrate is founded upon the evidence given both for and against the delinquent?—That may in some cases produce an effect; of course the evidence which is given before the grand jury is only the evidence on the part of the Crown, which must, in almost all cases, be the strongest evidence against the prisoner; but I can conceive a case, certainly, where a prisoner brings forward evidence which tells more against than for him, and I suppose it is to a case of that sort you are alluding; but the objection that I make is of a totally different character. It appears to me, that when a party has been committed for trial, and imprisoned for a long period, it ought not to be left to a secret tribunal to determine whether he shall be tried,—a tribunal sworn to secresy, assigning no reason, and leaving the public quite ignorant upon the subject.

1186. Mr. *Estcourt.*] But, upon the whole, is not the operation of the grand jury favourable to the liberties of the subject?—I really cannot identify the liberty of the subject with the acquittal of the prisoner; I apprehend that the liberty of the subject requires that every body who has been guilty of an offence shall be punished, and that whenever there is a case made out against the prisoner, sufficient to induce a magistrate to imprison him for a long period, that prisoner ought to be put upon his trial. I apprehend that it is much more for the liberty of the subject, generally speaking, that he should under those circumstances be put upon his trial, than that after a secret inquiry he should be set at large; the liberty of the prisoner is one thing, the liberty of the subject is quite another.

1187. Does not the same reason operate, whether the imprisonment be long or be short, that if a person is committed to custody for trial by a magistrate, it is equally important to the public, though it may not be so important perhaps to the individual prisoner, to know what are the reasons why he has not been put upon his trial?—Undoubtedly, of equal importance; and when I speak of long periods of imprisonment, it is for this reason only, that a person charged must sometimes be remanded, and consequently imprisoned, in order to have all the evidence before the adjudicating magistrate; now, imprisonment under these circumstances appears to me a necessary evil, until the evidence is in such a state that the magistrate can properly adjudicate upon it; it appears to me a necessary evil that the prisoner, whether innocent or guilty, should be kept in safe custody till then; but the moment the evidence is in such a state, to keep him in custody for a single hour, if it can be avoided, is an evil of a very different character; the former has for its object the right adjudication as to the offence charged, but the latter has no such object; the case is made out, the depositions are drawn, they are the same depositions that are afterwards submitted to the sessions, and he remains in prison during the period between his final commitment by the magistrate and his trial at the sessions, for weeks or months, without any thing further being done which can at all contribute to the administration of justice, or the right adjudication in that particular case.

1188. *Chairman.*] In the course of your former examination you were asked whether your observations applied to stipendiary magistrates within the metropolis, or to magistrates in general; and you stated that they were applicable to magistrates in general; that appears a little inconsistent with a subsequent answer to which it is not necessary to allude; will you have the goodness to explain that a little more fully?—I think if the Committee refer to the evidence which immediately preceded the first question, they will see my meaning, which was this; I apprehend, that every magistrate, whether in town or the country, who possesses competent legal knowledge, is quite as capable as a jury at sessions of drawing a right conclusion from the facts of which I was speaking; I suppose every magistrate to have such legal knowledge; as to the knowledge which is actually possessed by the great body of magistrates in this country, I do not presume to offer any opinion; but assuming that, I meant by my answer to say, that I think them quite as competent as a jury to draw a conclusion, and less liable than a jury to be misled by that sophistical ingenuity to which I had been referring.

1189. But

1189. But as the alteration of the law proposed is extensive, and to a certain extent novel, should you be disposed at once to extend a power of summarily convicting the cases in question, or would you limit it to the police and stipendiary magistrates, with a view to the trial of the experiment first in the metropolis and the great towns of the kingdom?—I have already answered that question, and stated the reason why I would confine it to the police magistrates. *John Buckle*, Esq. 1 June 1837.

Edward Gibbon Wakefield, Esq., called in; and Examined.

1190. *Chairman.*] YOU have paid considerable attention to the subject of police, have you not?—Some years ago I had peculiar opportunities of paying attention to the subject, and did so with great care; I allude to the period of 1827, 1828 and 1829; since then I have not paid any particular attention to the subject; but, from the impressions then made upon my mind, I have naturally felt a great interest in it, and have taken such opportunities as have since offered of making observations which I thought it worth while to gather and collect. *E. G. Wakefield*, Esq.

1191. You are the author of a work on the punishment of death in the metropolis?—I am.

1192. In the course of that work you spoke very favourably of the Metropolitan Police; will you inform the Committee whether those opinions remain unchanged, and whether the anticipations which you then formed as to the prevention and detection of crime have been realized?—At the time of the publication of that work the new system of police had been but a very short time in operation, and I could only have an opportunity of anticipating that it would work beneficially, because, from observations which I had had opportunities of making as to the old system, I felt sure that almost any change must be serviceable. At the same time, when that work was published, I had had some opportunity of observing the working of the new system; I anticipated that great good would result from it, and my anticipations have been completely realized; but the anticipation was confined to one part of the system of police; chiefly, almost entirely, to the part of detection. I thought that the new police would necessarily render detection more easy. Under the old police, what was called detection was a mockery, except in a few cases where large sums had been lost and grievous crimes committed, and a great stir was made; on those particular occasions the officers of Bow-street exerted themselves, and very great pains were sometimes taken to detect the criminal; but, except in such cases, there appeared to me to be no means whatever of detection. The new police have, no doubt, contributed to the detection of crime in London; the character of the men is probably better than that of the old policemen. They seem to have less connexion with criminals, to be less acquainted with them; amongst the old police it was very difficult to distinguish the thief from the policeman; they spoke the same slang language, they frequented the same flash public-houses, and their habits and manners and conversation were so much alike, that it was difficult to tell one from the other. The new police being a different order of men and not having this intercourse with thieves, have, no doubt, been of service in the way of detection. But the new system appears to me to have been chiefly of use in a different respect; in maintaining order, in preventing nuisances, in driving out of sight many evils which still exist, but which used to exist in the face of day, to the disgust of the spectators, and to the lowering of their moral tone too. I think that that has been the chief use of the new system; and I think that the greater facilities of detection afforded by it have not been sufficient to operate as a check upon crime, that is, as a means of preventing crime, I mean hindering it; (I do not mean preventing it, as we say that the crime of one man is prevented by the punishment of another, or as one man is prevented from committing a crime by seeing another punished;) in that respect I do not see that the new police has been useful.

1193. What do you think are the principal defects of the present system?—The subject is very extensive, and I shall find it necessary to break it up into parts.

1194. First, then, with reference to the direct prevention or hindrance of crime, do you conceive that the system requires alteration, and can you suggest any practical alterations from your own observation and experience?—I will endeavour to do so by referring to some circumstances in the metropolis which appear to me highly calculated to promote crime, and as to which I do not imagine that any check has taken place since the introduction of the new system. I allude,

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in the first place, to the existence of what may be called nurseries of crime. There are in all parts of London, at least in all that may be called the poorer parts of London, houses for the reception of thieves, known to be houses kept for that purpose, inhabited only by thieves, where thieves meet receivers of stolen goods, where robberies are planned, and where thieves are concealed for a time after the commission of some crime which has excited observation. Those nurseries of crime are perfectly known to the police, or could be known; they are known to all the thieves, they are known to every body who gets into communication with the thieves. I do not say that they are known to the magistrates, because the magistrates may not think it worth while to inquire respecting them; but every house of that sort might be known, and I imagine is as well known to certain parties, as every public-house. Now the new system of police appears to me to have done nothing with a view to the rooting out of those nuisances. In the next place, there exist, or at least there did exist some years ago, and I strongly suspect that there do exist, a great number of people in London whose sole occupation, whose trade and whose means of livelihood, is seducing young people to the commission of crime, crimes of depredation entirely; persons who keep little shops, or who pretend to keep little shops, fruit-shops, and sell cakes, many of them women, sometimes men, who watch for boys loitering about in the neighbourhood, and take opportunities of making acquaintance with them, induce them to get into debt for the enjoyments which the shop affords, and then suggest to them for the first time the idea of robbing somebody, either of robbing in a shop when opportunity shall serve, or robbing their masters, if they happen to be apprentices, which is a common thing, or their parents. The persons who keep those shops are generally receivers of stolen goods, as well as prompters to crime; they receive the things stolen by the boys, and dispose of them to other receivers of stolen goods, who conduct that business upon a large scale. Nothing that I know of is done under the new system, any more than was done under the old, to root out those prompters to crime. I should just mention another class of persons who do more than any other class to encourage crime; and that is receivers of stolen goods upon a large scale. Now it was the case, and probably is still quite notorious to every one acquainted with the criminal population of London, that no thief ever had the slightest difficulty in disposing of stolen goods; it was just as easy to dispose of stolen goods as it is to go into an open shop and buy something from the shopkeeper; the houses of the receivers were well known, their persons were known, they were known always to be provided with funds, with money, with gold and silver which could not be traced, and which was always ready; and they had the means of carrying away and disposing of the goods which they might purchase from thieves. That was at the time to which I allude; I know of no circumstance to induce me to suppose that it is not so now; I mean to say, that it was a business by which men used to make fortunes, such fortunes as 20,000*l.* and 30,000*l.* I have heard of many persons of that sort; and I believe the fact to be, that they lived in very good houses, and that some of them even kept a carriage, which is, in England, a mark of what is called respectability. There was one person whose name will perhaps be familiar to some members of the Committee, Ikey Solomans, who made his escape once or twice, and was, I believe, transported afterwards.

1195. Do you attribute his escape to merely mechanical means and dexterity, or was it not by direct bribery?—Probably by direct bribery; it is very difficult to say; he and his friends found the means of putting some soporific into the drink which they gave to the officer in charge of him; whether the officer was bribed or not, it is not very easy to say; at all events he was a most inefficient officer, and the circumstance of his escape was a great reflection upon the police of the city of London. He had been convicted of some offence, and was sentenced to transportation; a person of the same name happened also to be on board the hulk to which he was sent, and obtained a pardon; the pardon was delivered to the wrong man, the names being the same, and thus Solomans was discharged when he ought to have been detained; he belonged to a family of thieves and receivers of stolen goods, very shrewd and very acute people; his father said to him, "Never mind, it is a mistake; as soon as it is known to be a mistake, go down to the Secretary of State, present yourself to him, and the mistake will bring you a pardon." It turned out so; he did get a pardon, and he was then a beggar. In the course of a few years he possessed a very considerable property, with which he has

has since established himself as a merchant in Van Diemen's land, and where he did, a very few years ago, conduct a considerable business, part of it being a business of commission for thieves for the transference of property obtained here to the convicts in the colony; but I mention that instance, because it must be familiar to some Members of the Committee. That man's fortune was made in a short time. Now every body knew where Ikey Solomans lived; he made his escape, and there was a great sensation created in consequence of his escape, and the city officers became very desirous to discover something that should make up for what had happened, and they ferreted out the places where his stolen goods had been kept; they discovered cellars and trap-doors, and all sorts of places of concealment, which they found full of stolen goods, and which they might have found full of stolen goods at any time in that man's career; but they did nothing; they had not been excited to do any thing. Now it is quite clear that as long as there is a perfect facility of disposing of stolen goods, there will and must be thieves. So long as the facility is quite perfect, the thief obtains property not his own, and he has only to go the distance between the place where he obtains the property and the house for the receiving of stolen goods, and dispose of it for a certain value. That appears to me to be the greatest encouragement to the crime of depredation, and I am not aware that the new police has done any thing to interfere with the receiver of stolen goods. An improvement in the law was effected by a measure introduced by Sir Robert Peel, which rendered the evidence of the guilt of a party, as a receiver of stolen goods, more easy to be obtained than it was before; but the number of receivers has not been diminished; the facility of disposing of stolen goods is as great as ever; and the evil, therefore, looking to the evil produced by the facility, appears to me to be as great as ever it was.

1196. In fact, then, the opinion you have stated in the work to which I have alluded remains the same, in your mind, that no thief, however young or inexperienced, finds the least difficulty in disposing of stolen goods?—That is my decided opinion; indeed I know it to be the fact.

1197. Would you not include amongst those normal schools of crime many of the public prisons of the metropolis?—Certainly; in the work to which you have alluded, I think it is stated that the debtors' prisons may be considered as nurseries of crime. A great many instances came under my observation of persons who were seduced into crime in consequence of having fallen into misfortune; that misfortune led them to a debtors' prison, and there they met with persons who persuaded them that as they had not been able to do well, as it is called, by an honest course, the time was come for trying a dishonest one; and men in the state of mind in which one may suppose that a person is when he gets into a debtors' prison must be very open to receive such suggestions; I know a great many cases (I cannot pretend to recollect them now, but they made a strong impression upon my mind at the time) of men who have in consequence of that been brought to the condemned cells of Newgate, that is, under sentence of death; and I know of one, who was not indeed executed, because he took poison the night before he was to have been executed, who told me, and who I firmly believe was first incited to crime when a prisoner in the Fleet for debt; the crime into which he was seduced was that of passing forged Bank of England notes; he was a man of very showy appearance, and he had been a captain in the army, a man of good family; he said this crime was first suggested to him by persons who were prisoners in the Fleet, but he afterwards discovered, having been a prisoner there more than once, that one of a gang of utterers of forged notes lived constantly in the Fleet, and for no other purpose than that of inducing reckless young men of good appearance who could easily pass notes, to take notes from them, and to dispose of them in transactions; I could hardly believe that that was true, and I got some inquiries to be made with respect to the person whom he had pointed out to me as one of a gang, and I found that that person was constantly in the Fleet; the gang committed a robbery upon a bank in Cornwall, and they were entirely broken up, and from that time forth the person who had resided in the Fleet disappeared, though he was not one of the persons convicted or suspected of that particular crime; I never heard of him since, but the inquiries which I then made convinced me that it was a fact that one of a gang of what are called "family men," that is, rich thieves and rich receivers of stolen goods, did reside continually in the Fleet for the purpose of seducing young men into the commission of crime.

1198. Lord *Hotham*.] Did this person live constantly in the prison?—He was in and out of the prison, but a prisoner on a friendly arrest; of course, unless he had

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been a prisoner, he would not have been able to practice upon the prisoners upon whom he wished to make an impression.

1199. *Chairman.*] What is the effect of public executions; do they tend to encourage crime?—I believe that public executions have a most lamentable effect upon most of the grown people and upon all of the young people who go near them. I have stated in the work to which allusion has been made, that I know of one case of a man who was tried for forging in Mr. Rothschild's name, who assured me that the first thought of committing a forgery had occurred to him when he was accidentally witnessing the execution of Fauntleroy. This seemed so strange that I took a great deal of pains to question him and to trace, if it was possible, the origin of such a feeling. He said, that passing by, and seeing Fauntleroy executed, a sentiment of desperation came into his mind that his own circumstances had not been good before, but that he never had felt desperate about them; that he hoped he should be able to get over some difficulties in which he was, and that he had never contemplated for a moment till then the idea of committing a forgery. I believe that that man told the truth; he is one of the very, very few men who commit crime and become reformed. He is well known to Mr. Barrett, the keeper of Whitecross-street prison, and is doing very well; but it should be observed, that having been acquitted he has never been punished; if he had been punished, I should doubt whether he would now be a reformed person.

1200. Punished, that is, under the present system of prison discipline?—Clearly; that is a peculiar case, which I mention rather on account of its curiosity than of its being one of a general character. The great evil which seems to me to arise from public executions in inciting to crime is, that they create two of the worst possible feelings; one is the sentiment of desperation, and the other is a careless indifference to punishment or reward, a careless indifference to every thing but the present moment. I cannot suppose that the youth who attended the other day at the fair which was held in the Old Bailey previous to the execution of Greenacre, and who amused himself there with singing and talking, and eating "Greenacre pies," and buying "brandy-balls" and other such things as were sold upon this occasion, a complete fair having been held, that he should after that be capable of distinguishing between right and wrong. The putting to death a fellow creature in cold blood and in public, appears to me to be a sight which must degrade and altogether debase those who are in the habit of witnessing it; now the criminal population in London make a point of witnessing executions; it is a sort of excitement to them, and they always attend when they can; not only do they attend when they can, but they take other persons not yet criminal, particularly boys, to witness this horrible sight; and although a boy taken along with a thief may be shocked the first time he has witnessed the execution, yet, after he has witnessed three or four of those butcherings (for they are really that), he goes home prepared almost for any thing. I do not say that theoretically, merely because it seems reasonable that it should be so, but because I know myself a great number of boys who became thieves and passed through Newgate, some to the hulks, some to the penitentiary, some into the condemned cells, and some to the gallows, in consequence of their having witnessed executions, whose first idea of crime was suggested to them in front of the prison during the execution.

1201. This information is also founded, is it not, upon conversations which you have overheard at the time that the parties imagined they were speaking in confidence to each other?—Very often.

1202. And therefore it is information derived actually from the criminal who was unconsciously furnishing the means by which you have formed those opinions?—Certainly.

1203. It did not arise out of any preconceived theory or questioning of your own?—Certainly not; at the time when I made these inquiries I had not thought upon the subject, and I could not have formed any theory, for I was as ignorant of the subject then as some people are now who ought to be better informed.

1204. Have criminals informed you that they were led to become thieves by attending those executions?—Yes; I think I mentioned in the work, to which allusion has been made (it is in that work or some other publication,) that it was the common practice of the boys in Newgate to go through the ceremony in derision of an execution, and sometimes on the very day when an execution had taken place, one of them playing the part of the sheriff and another the part of the reverend ordinary, a third the part of the hangman, and a fourth the

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the part of a culprit, with a rope; on the very day when an execution had taken place in front of the prison where they were confined.

1205. There being, therefore, so many fertile sources of crime in the metropolis, is it not desirable that some much more efficient means of detection should be afforded?—Most desirable, as it appears to me; for although one cannot say that the detection of crime in London is exactly nobody's business, still it is very difficult to point out whose business it is; if a person is robbed in London, it seems to be nobody's business but his own; at least there seem to be no public functionaries whose business it is to detect the person who commits that crime. The person who has been robbed may apply to a magistrate of one of the police offices, where he will obtain the assistance of an active officer, if he be prepared to pay for that assistance; but he will not obtain any assistance for the special case, unless he hold out a reward in prospect to the officer; he may, indeed, apply at the office of the Commissioners of Police, and perhaps some means would be adopted there of detecting the particular case, inasmuch as there appear to be, since the institution of the new system, much better means of information as to the loss of property, and as to the description of property; but, except in that respect, the new system appears to me to be almost as deficient as the old one as to the means of detection; and I cannot conceive that it should be otherwise than deficient, so long as there shall be no authority specially charged with the business of detection, that is, so charged with it that he should have nothing else to do. If he have any other things to do, it may happen that his motive for doing the other things will be stronger than his motive for pursuing the detection of criminals; if he have nothing else to do, then, if it should be found that the means of detection are not vigorously applied, the functionary would be blamed; he might lose his situation or his salary, or whatever was his motive for doing his duty, and detection would then be carried, probably, if the persons were all well selected, to a high point of perfection.

1206. In fact, you would confine the business of detection to persons properly qualified, having a duty of that nature specially intrusted to them?—It has always appeared to me that there should be some class of police officers apart from all the others, under the general management, of course, of that which formed the supreme police authority; but apart from all the others, whose sole business should be as far as possible to hinder the commission of crime by rooting out the nurseries of crime, and to detect crime by pursuing thieves and tracing stolen goods, and by all the other methods in which crime is detected; and it is but applying the well-known principle of the division of employments which in any private business, a factory for instance, and, in short, in every thing which concerns our individual affairs, we know very well how to apply, but which seems to be entirely neglected in this very important matter of police, at least in this country.

1207. What is your opinion as to the expediency of putting an end to the separate jurisdictions of the metropolis, the one I allude to being under the City authorities, and the other being under the authority of the Commissioners?—It has always appeared to me most desirable, either that the authority of the Police Commissioners should reside in that of the City authorities, or that that of the City authorities should reside in that of the Police Commissioners. The present system of two jurisdictions seems upon the face of it absurd; we have a general system applicable to a great portion of the metropolis, a system under central direction, which is an essential feature of good police, because, without a central authority, there cannot be good information as to the commission of crimes, as there cannot be a good post office, a good transmission of letters, without a central authority. We have that central authority as to the greater part of the metropolis and its neighbourhood, and in the midst of that which is so good we place a distinct and separate authority; so that we have, as respects crime, something like what is termed a clergy reserve in Canada. A clergy reserve in Canada is a piece of ground marked out for the clergy, not used by them, for they do not cultivate the ground; they proceed upon the dog-in-the-manger principle, as it was called by Mr. Bentham, taking that which they cannot use; the clergy reserve is a piece of ground marked out, not used by any body; it does injury to the whole of the land-owners in its neighbourhood; it prevents them from communicating with each other; it interferes with their plans; it is a desert planted amongst them: so the city authority for the police appears to me to be a desert in the way of improvement, planted in the midst of the improved system, as if the object had really been to forbid the complete success of the improved system. I have always viewed it in that light; I have not viewed it so from having formed any theories upon the sub-

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ject, for I had no care or thought upon the subject, except as it was forced upon me by an observation of the facts.

1208. Combined with those more active means for the prevention of crime, would it not also be desirable that some means should be adopted for the prosecution of criminals, and that it should no longer be left to individuals; that is to say, would it not be desirable to establish an officer to be the public prosecutor?—On that point again I have arrived at a very decided opinion, and, as on a former occasion, merely through an observation of the facts; every one knows that the proportion of convictions to committals in this country is very small; any one who should for a time inhabit a criminal prison in London would soon learn why it is so; he would find that the common occupation of a depredator, or indeed of almost any criminal, as soon as he is committed to prison for trial, is to devise all sorts of means of preventing the prosecution, and hindering the success of the prosecution, such means as tampering with the witnesses, tampering with the private prosecutor himself, and procuring evidence to establish a case of innocence by means of subornation of perjury; now there can be very little doubt that those endeavours on the part of criminals are very often successful, but no such endeavours would be made to tamper with a public prosecutor; but another great evil arising from the want of a public prosecutor is not so much that the private prosecutor is liable to be tampered with, as that he is engaged about his own occupations, in which he has incurred a loss, and he is quite unwilling to incur another in giving up a great deal of his time and some of his money in the pursuit of the ends of justice; he has suffered; the object of the law in punishing the individual who has injured him is not to revenge his wrong, it is to benefit the public, and yet the public leaves the person injured to be the only prosecutor of the criminal. It is therefore only in human nature, that unless the prosecutor be a man of a vindictive turn of mind, unless he be actuated by some angry feeling, he will never be a diligent prosecutor; in a great number of cases he would not prosecute at all; he will do just enough to avoid forfeiting his recognizance, and the prisoner will escape; I consider the want of a public prosecutor, even if detection were well secured, which it is not, would vitiate any system of police.

1209. Is it not necessary, in your opinion, that some additional legislative provision should be made for the purpose of hindering or preventing crimes, and putting an end, as far as possible, to those sources of crime to which you have alluded; do you think the present police law of the metropolis at all adequate to the purpose?—I think it is not. I think that additional powers are obviously required; powers, I mean, of the nature of that which was given by Sir Robert Peel's Act, whereby it is enacted, that a person found in possession of stolen goods within a certain period of the robbery shall be held to be a receiver of stolen goods, unless he can satisfactorily account for their possession. That Act did give something like the weapon with which the police might interfere with a receiver of stolen goods. But a great number of other methods might be supposed of strengthening the hands of the police, as against those the greatest pests of society; and though I can very well understand that amongst thieves, and amongst the vulgar-minded though not thieves, there might be some opposition to giving such additional powers to the police, still every reasonable person who but sees the enormous evil resulting from the impunity of receivers of stolen goods, would rejoice, I should think, at some enactment which should enable the police thoroughly to interfere with those people, and to remove the greatest temptation to crime.

1210. Supposing extended powers to be given for the purpose, to whom would you intrust the administration of them?—That question would lead to some considerations which are of a very important nature; but I will endeavour to confine myself to the immediate subject before the Committee. It has always appeared to me that there was something very wrong in mixing up the functions of the police officer, as he may be called, and the magistrate; the functions which they really have to perform are of a totally different character; the magistrate should be learned in the law, a grave person, and having such qualities as would naturally give him weight with the public; the police officer should be a man intimately acquainted with all the haunts of vice, and his occupations are entirely and totally of a different character from those of the magistrate; and after reflecting upon the subject, I was no longer surprised at the very inefficient operation of the old Bow-street system. The new system, in as far as it has established, to a considerable extent, a totally distinct police authority, appears to me to be a very great improvement; I have had many opportunities of observing that; whilst there was no

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terror of the old police magistrate as a detector of crime, there is a very considerable fear of the inspector of police, and of the office of the Commissioners generally. Not merely have I observed that amongst common depredators, with whom I have always sought opportunities of communicating rather than otherwise, but I have also observed its operation upon persons upon whom depredations have been committed; it has almost become a saying in London now, if any thing has been lost, "Go to the Commissioners; there is a chance of finding it if you go to the Commissioners;" there was none in the case of the magistrate under the old system; seeing that the new system is totally inefficient as a means of hindrance, and very defective as a means of detection, yet, as an example of special authority and special responsibility, it appears to me to be a most valuable improvement; I find my own view of this subject expressed with great clearness and felicity in Mr. Reeves' translation of "Tocqueville's Democracy in America;" with the permission of the Committee, I will read the passage: "The third characteristic of the judicial power is its inability to act unless it is appealed to, or until it has taken cognizance of an affair; this characteristic is less general than the other two, but, notwithstanding the exceptions, I think it may be regarded as essential; the judicial power is by its nature devoid of action, it must be put in motion in order to produce a result; when it is called upon to repress a crime and to punish the criminal, when a wrong is to be redressed, it is ready to redress it; when an act requires interpretation, it is prepared to interpret it; but it does not pursue criminals, hunt out wrongs, or examine into the evidence of its own accord; a judicial functionary who should open the proceedings and usurp the censorship of the law, would, in some measure, do violence to the passive nature of his authority."

1211. Mr. Alderman *Wood.*] You stated in a former part of your evidence that you would have officers not forming part of the police body, but a special body of men whose duty should be the detection of crime; are you not aware that there are in most of the police offices men of that class?—I believe that there are in all the public offices men whose particular occupation it is to detect crime, but then I look upon them rather as private speculators in the detection of crime than as efficient officers for the ends of justice; they move when they are paid for it, but unless they are paid for it they do not exercise their special function, at least they do not exercise it in such a manner as to give one any assurance that the crime will be detected; if any gentleman in the city of London were robbed to a large amount, he would go to the police office, to the Mansion-house; he would call upon the most active of the officers there to use means for the detecting of the crime; but unless he happened to be in authority over those officers, he would not expect that his wish would be complied with unless he offered a reward, unless he paid the officer for doing the special service.

1212. Has it come within your certain knowledge that that is an absolute fact, that if an individual who was robbed went to the Mansion-house and stated to the Lord Mayor, or the magistrate sitting, that he required the assistance of one of their special officers, or such as they would recommend, that it would be of absolute necessity that that officer should be bribed before he began to make one movement towards the detection of the offender or offenders?—I believe so, but in such a case there would be an absolute necessity that not one word should be said about it; I do not, of course, believe that he would say, or that the magistrate would say to him, any thing at all about feeing the officer, but I do not believe that the officer would pursue the inquiry into that particular offence, unless he expected to obtain something for it more than his usual salary.

1213. Suppose the magistrates at the Mansion-house and at Guildhall have fixed upon three men to execute all those particular duties to which you have been referring, both in the prevention and detection of crime, have you any knowledge of any instance at all, that you could bring before this Committee, in which they have not been fully ready to assist any individual, whether poor or rich, in the detection of crime?—I have no instance within my recollection, nor should I be likely to have one, because I believe that no person, unless he intended to pay for the special service, would take the trouble to go and ask for it; consequently the case of refusal could hardly have occurred.

1214. Whom would you put in such a position; would you put a person there with any large or particular salary, that would be above accepting bribes?—My opinion has for a long time been, since I have had an opportunity of forming

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a decided opinion upon the subject, that almost all officers of police are lamentably underpaid.

1215. Suppose those men are paid more than double the pay of the common police of the city, two guineas a week as a salary, would you say that that was enough for the man to be paid, while the salary of the common policeman is only 19*s.* per week?—I do not feel competent to answer as to what the amount of salary ought to be; but I feel satisfied it ought to be such as to provide the person holding the office with a strong motive for performing his duties in the ordinary routine of the office.

1216. You have stated that persons imprisoned for debt are driven to commit crimes; from your information or experience, have you traced, amongst the various boys which you have seen in Newgate or elsewhere, that crimes have arisen from their parents being imprisoned for short periods by the Court of Requests?—I have no doubt that a number of thieves in London are in that way created, I may say, because the great proportion of the thieves of London begin as boys; and I have known a great many instances of boys who were corrupted by going into debtors' prisons to see their parents.

1217. Supposing the parent to be in prison, and deprived of his labour for three weeks, or a month, or 100 days, the children being thrown into the streets, are you aware of many instances of those boys becoming thieves?—I should not be able to refer to any instances of the particular case of a boy becoming a thief in consequence of his parent being imprisoned under a judgment of the Court of Requests; but of the general case of imprisonment for debt, that many boys are made criminals by going to visit their parents in debtors' prisons, I am quite satisfied of.

1218. Have you paid any attention to the day police of the city of London within the last year or two?—I believe it to be very much improved of late years.

1219. Are they, from your observation, a class of men well calculated, both by their apparent power and age, to fill that active station required within the city of London?—I should think they were.

1220. Have you observed their general conduct with regard to their duty connected with the great public streets?—I have, but not particularly; it is very seldom that I go into the city, but when I have been there, I have been led, from my previous interest in the subject, to observe almost any thing that relates to the subject of police, and I have been struck with the very great improvement in the state of the streets of the city since the institution of the New City Police, perhaps as great an improvement as has occurred in the streets of the rest of the metropolis since the institution of the New General Police.

1221. *Chairman.*] Would it not, in your opinion, tend to diminish crime, if the punishment were more immediately to follow the offence?—Great propinquity of punishment to the crime seems to me to be an essential feature in the correctional police of London; my impression upon this subject was so strong, that several years ago, in the work already alluded to, I suggested the expediency of a perpetual court; there can be no doubt that the New Central Criminal Court, by rendering the sessions more frequent and the time of trial nearer to the time of commitment, has been a considerable improvement; but if a court were sitting continually, the common course of things would be, that if a crime were committed to-day, the prisoner would be put upon his trial perhaps to-morrow, and on the third day might be undergoing the punishment awarded to him; another reason for desiring a perpetual court is, that the time given to the trial of prisoners at present in the metropolis is so short as to be calculated to bring justice itself into disrespect; a few years ago I know that the average time of a criminal trial at the Old Bailey was about eight minutes; I do not know what it is now, but of course it looked like, and in a great number of instances was, a mockery of a trial; that was felt, I will not say among the criminal classes, but amongst other classes who were aware of it, as a circumstance calculated to bring justice into disrespect; that, however, is not my main reason for wishing that trials should take place sooner after the commission of the offence than they do at present; my main reason is, that every thief is a gambler; his whole life is a life of gambling, and all his impressions are the impressions of a gambler; he is always ready to take his chance, he is always ready to lay a great deal upon the turn-up of a die, he has the tendency of a gambler's mind; now if you put the prospect of punishment a long way off, he knows that the chances of escape are increased; the prosecutor may die or go out of London,

London, the witness may die or go out of London, or forfeit his recognizance; twenty things may happen between the offence and the trial which would prevent his being convicted; with a gambler's mind he depends entirely upon the chances of escape; if there be any chances of escape, he will dwell upon them to the exclusion of all thought of the chances of conviction, and there can be no doubt that the time which elapses between the offence and the trial is exceedingly injurious in encouraging offenders to dwell upon the prospect of impunity, and to consider that prospect much more favourable than it really is.

1222. Mr. *Elphinstone.*] You think, then, that the Central Criminal Court is an improvement upon the old system?—Very considerable improvement in two ways; in the first place, as the trials are more frequent, and secondly, as it embraces a larger field of action by taking in part of Surrey and Kent and Essex.

1223. Mr. *Marshall.*] Of course your observations will apply to the propriety of summary jurisdiction being given to magistrates?—Summary jurisdiction has appeared to me to be a most desirable improvement, I was going to say as to almost all cases, certainly as to all cases of common depredation, and as to all cases of juvenile offenders; the propinquity of the punishment to the crime would be greatly increased by means of a summary jurisdiction, and the absurdity would be spared of taking up a little boy in a pinafore and making him stand before 12 men, and hold up his hand and say that he would be tried by God and his country. It is quite a laughable thing in one sense on account of its absurdity, but in another it is a very melancholy thing; the solemn conviction by a jury brands the baby for ever. I have seen a baby of seven years of age turned back into the Newgate from the Old Bailey Court, convicted of felony; he was ruined for ever. Now, with a summary jurisdiction, this solemn ceremony would be spared, and a great deal of good would result from that. But again, the jury system in London, I know very little of it elsewhere, but I do know a great deal of the working of juries in London, and the means adopted by prisoners to obtain acquittals, and I should say that the juries in London are nearly as unfit as men can be to adjudicate upon such questions as those which come before them; they appear to me to be as unfit and even more unfit than the magistrates in the city; the magistrates in the city are unfit, because they have no legal education, and none of that experience which is requisite; they may, after a number of years, become experienced and become qualified, and there are exceptions to every rule; there are men of superior talent, and who become qualified in a very short time, but, generally speaking, a man who has been brought up to trade, whose mind has always been occupied with it and no other serious consideration, must be incompetent to adjudicate upon the questions that come before the magistrates in the city. It appears to me to be just so with the juries, and the fact is proved almost by the conduct of prisoners awaiting their trial. I cannot at present bear in mind many facts, or perhaps any relating to this subject; but the Committee could obtain most valuable information upon it from Mr. Barrett, who is now the keeper of Whitecross prison, and who was deputy keeper of Newgate; I think if he were examined upon the means which have been adopted by prisoners in Newgate to conduct their defence, including the making of briefs by prisoners for other prisoners, it would be found that the common impression among the thieves is, that a London jury is a body of men to be practised upon, and men to be deluded. Now, in the case of summary jurisdiction, supposing the magistrate to be well selected, you have a person of acute mind and legal knowledge, a legal turn of mind, and accustomed to discriminate between truth and falsehood, possessing a sort of knowledge which appears to me to be indispensable in a good magistrate, a kind of metaphysical knowledge, a knowledge of the human mind, which you cannot expect in the case of juries; it is quite impossible that you should expect it.

1224. *Chairman.*] Inasmuch as extending the summary jurisdiction of magistrates over petty offences would lead in so far to the abolition of trial by jury, do you think the benefits that might be described and clearly made out to arise from such extension of the power of magistrates would satisfy the public mind against any apprehension of loss from that protection which a jury is supposed to throw round the liberties of the subject?—Every novelty, of course, finds a number of persons ready to object to it; and there appears to have existed in this country a strong feeling in favour of juries as a means of protecting what is called the liberty of the subject; I hold no speculative views upon the subject. Seeing that juries were an inefficient instrument of correctional police, I have never been able to understand what was

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meant, or what was the gain to the liberty of the subject. I do not know what the opinion of other persons, I mean to say not dishonest persons, would be; but I am quite sure of one thing, of the opinion of thieves, that they would be very much alarmed indeed at the prospect of an intelligent and acute magistrate, rather than an ignorant jury, adjudicating upon the case; I can hardly conceive any thing which would create a greater sensation amongst them, or more alarm; I do not know any one part of correctional police which would create so much alarm amongst them as the institution of a general summary jurisdiction, supposing the magistrates to be well selected.

1225. Mr. *Marshall.*] Would smaller punishments be sufficient, under a system of summary convictions by magistrates, than are now necessary under a system of the prisoners being tried by juries at sessions?—In as far as punishment tends to prevent crime, of course a smaller degree of power would have the same effect as the greater one, if the propinquity of the punishment to the crime were greater; in the case of the smaller degree of power, I should say, merely for example, that one month's imprisonment inflicted immediately after the offence would have more effect than one or two years' imprisonment inflicted after a considerable lapse of time between the offence and the punishment, so that of course a summary jurisdiction, by expediting the punishment, and probably by rendering it less uncertain by removing many of the chances of escape, would enable the Legislature to attain the same end with a smaller degree of punishment.

1226. You are aware of the great difficulty that is now entertained by those who have paid much attention to the subject of secondary punishments, in finding a good secondary punishment; would not that difficulty be diminished by shortening the duration of that punishment?—The difficulty would in some degree be diminished; but I myself am so deeply impressed with that difficulty, that I do not know that it would be diminished in any considerable degree; I have paid a great deal of attention to that subject, and I am unable to discover at present any method of secondary punishment which would effect all the objects of punishment, so far as I know what those objects are; I never knew a man made better from being punished; I have known a man frequently made worse by it.

1227. Would not the certainty of the crimes being punished be likely to make those who suffer from depredations more inclined to exert themselves in prosecuting to the conviction of the thief?—No doubt it would have that tendency, because one of the things of which a private prosecutor has to complain is, that all his trouble, which the public calls upon him to make for them, is very often quite fruitless, the chances of escape being very considerable.

1228. *Chairman.*] What do you apprehend to be the causes of the failure of punishment, such as now exists in our prisons, in the way of reform?—That is a very extensive subject; I will say a few words upon it: an observation of facts alone first satisfied me that punishment did not effect any reformation of character, and it was then that I inquired why that should be; that it checks crime, that it has advantages in deterring others, is not to be doubted, but that it has any good effect upon the criminals I do not believe: I believe, in the great mass of cases, that it has an injurious effect upon them; that, commonly speaking, a person who enters a London criminal prison for having committed one offence, not a hardened person, is, after his punishment, an irreclaimable man; that is my general opinion.

1229. Does that arise from the nature of the punishment, or from the opinion which you entertain, that punishment in itself cannot reform?—My opinion is, that punishment, as punishment, cannot reform; imprisonment, which is a punishment, may reform very much indeed; it may give habits of order; it may give instruction; it may awaken, if proper means be used, moral sentiments, which are latent in us all probably; it may serve many good purposes; but as punishment, as vengeance, what is called the vengeance of the law, it does nothing but evil to the party himself undergoing it.

1230. Cannot you separate the principle of vengeance from the punishment directed only to reform and elevate the mind of the criminal?—I individually think that one might, but I should be afraid to utter such a sentiment in public, for fear I should be supposed fit for another sort of prison, that I was out of my mind; it would be laughed at. But though I think that, I have arrived at the firm conviction that punishment, as punishment, must be discarded, except in so far as we wish to create an impression upon other minds than that of the criminal; and

and that with respect to the criminal himself, punishment is to be nothing but the means of reforming him. I heard an expression made use of the other day by a member of the House of Commons, which I should be very glad to have an opportunity of repeating; it was in conversation upon this subject with Mr. O'Connell, and after going through the subject as I have been just now treating it, he said, "in short, Gaolers must be les frères de la charité.

1231. With regard to the punishment of juvenile offenders, do you not think, if, instead of our present prisons, something like houses of refuge were established, such as exist in America, houses in which education is given them, and instruction also in trade, together with arrangements as to their employment upon leaving the house, reformation might be effected in the minds of juvenile delinquents?—Reminding the Committee of an opinion which I expressed just now, that the greater part of the criminals in London begin at a very early age, that part of correctional police would appear to me to be perhaps the most important of all, because it would go to the very root of the evil; that would be the best of all means of prevention, or, as I called it just now, hindrance, any thing which should withdraw the juvenile criminal population from the commission of crime, without, as now happens in all cases where they are withdrawn, rendering them entirely incorrigible.

1232. You have acquainted yourself with the nature of such institutions in America; will you favour the Committee with such information as you may have upon that subject?—There is an account of a House of Refuge in New York, respecting which I will read some description; it is an extract from an account of "The Penitentiary System of the United States," by Messrs. Beaumont and Tocqueville, and translated by Lieber: "The House of Refuge, the discipline of which is neither too severe for youth nor too mild for the guilty, has therefore for its object the withdrawal of the young delinquent from a too rigorous punishment, and from the dangers of impunity. The individuals who are sent to the Houses of Refuge, without having been convicted of some offence, are boys and girls who are in a position dangerous to society and to themselves,—orphans who have been led to vagrancy by misery,—children abandoned by their parents, and who lead a disorderly life; all those, in one word, who, by their own faults or that of their parents, have fallen into a state so bordering upon crime, that they would become infallibly guilty, were they to retain their liberty; it has therefore been thought that the Houses of Refuge should contain at once juvenile offenders and those on the point of becoming such; the latter are spared the disgrace of judgment, and all protected against the pollution of the prison, and that no disgrace should be affixed to confinement in the House of Refuge. A name has been given to this establishment which reminds us of misfortune only; the House of Refuge, though containing a certain number of convict youths, is nevertheless no prison; he who is confined in it undergoes no punishment, and in general the decision by which the children are sent to the refuge has neither the solemnity nor the forms of a judgment; and it is here that we will mention a fact which seems to us characteristic of this institution; the magistrates who send the children to the Refuge never determine what length of time the delinquents must remain there; they merely send them to the house, which from that moment acquires all the rights of a guardian; this right of guardianship expires when the lad arrives at his twentieth year; but, even before he has attained this age, the managers of the establishment have a right to restore him to liberty, if his interest requires it."

1233. In America very extensive powers are given to certain persons to commit to houses of refuge; will you state what information you have upon that subject?—A note to that passage which I have just read says, "Upon this subject we believe that the guardianship of the managers of the Refuge usually terminates at the age of 18 for females, and 21 for males; we may add here, that the state exercises no direct management of those institutions, yet their charter of incorporation requires that their laws and regulations should not be inconsistent with the constitution of the country; and they judicially have a complete supervision of their rules and conduct, inasmuch as, by the medium of a writ of *habeas corpus*, the legal commitment or detention of any child may be inquired into and tested by the courts. It may also be stated, that the solemnity of a judgment often occurs before sending a subject to the Refuge, and in some cases is necessary; the various authorities which may send children to the House of Refuge are, first, the courts

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courts of justice; secondly, police officers, (meaning probably police magistrates;) thirdly, commissioners or managers of the alms-houses. The revised statutes of the State of New York declare, 'Whenever any person under the age of 16 years shall be convicted of any felony, the court, instead of sentencing such person to imprisonment in a state prison, may order that he be removed to and confined in the House of Refuge established by the Society for the Reformation of Juvenile Delinquency in the city of New York, unless notice shall have been received from the said society that there is not room in such house for the reception of further inmates.'"

1234. Might not also a system of colonial apprenticeship be introduced with advantage, as connected with our secondary punishments?—It appears to me that Houses of Refuge, however greatly desirable as substitutes for corrupting prisons, would be inefficient means of prevention and reformation, unless some method were adopted of providing for the young people who had been detained in them for a time. To place a youth in such a House of Refuge as that which is described in a passage from the work just quoted, for two or three years, until you believe that a reformation has been effected in his character, and then to turn him into the streets, would be to secure the waste of all the trouble and expense you had been at. The question is one, perhaps, rather in political economy than in criminal jurisprudence; but it is one which must be entertained by those who occupy themselves with this subject. This difficulty, the difficulty of providing for persons who have not been convicted, but who have only passed through those Houses of Refuge, which, if they were properly conducted, would, in my opinion, come to be considered as places of which the persons who had inhabited them would speak without shame,—even in that case the difficulty of providing for such persons appeared to me so great, that at the time when I turned my attention particularly to this subject, I was struck with the expediency of adopting some method of providing for such persons in the colonies, where the greater the supply of labour, the greater becomes the demand; that was in the year 1829, I think the end of 1828 or 1829, and I had a good deal of conversation upon the subject with a member of the present House of Commons, Mr. Hutt; we drew up together a plan of a colonial apprenticeship system, founded upon the system of Houses of Refuge. I think that we printed and circulated privately some copies of the plan, but did not pursue it further. It was taken up, however, by some gentlemen, and was carried into effect to a small extent, but still to a sufficient extent for an experiment, by a gentleman whose name is well known in the city,—Mr. Wilson. He, by dint of personal exertions, indefatigable exertions, not being a man of property himself, obtained the means of forming a house of refuge, with a view to the reformation of juvenile offenders, and the salvation, it may be termed, of orphan and destitute children not yet criminal. I had an opportunity, in 1832 I think, of examining the children who had been for some time in that house; the house was established at East Ham in Essex.

1235. That which has subsequently been called the Brenton Asylum?—I think it has, after Captain Brenton, who took an active part in the conduct of the undertaking. Of the boys whom I examined, several had been common thieves, and had been punished as criminals. I took pains, perhaps almost unjustly towards them, to revive their recollection of a prison, and of the loose, joyous life of a thief in London, and I felt quite convinced that those boys were thoroughly reformed, and I should not have had the slightest hesitation in taking any one of them into my house as a servant, although, until then, I was quite impressed with the belief that it was almost impossible to reform a London thief; I know now how it was done, because, after being surprised upon my examination of the boys, I took a great deal of pains to know what had been the conduct of Mr. Wilson and others towards them; and I found that Mr. Wilson, when he took those boys into the refuge, treated them exactly as if they were his own children, and not merely as if they were his own children, but as if they were his own innocent children; he said nothing to them which should lead them to imagine that they were undergoing punishment; on the contrary, he invented all kinds of ways of amusing them; he allowed them at first to indulge in their idle habits, and only put before them occupations which should lead them to take delight in some kind of labour; and when I talked to the boys about their probable destination, the object being to send them out as apprentices to the colonies, several of them spoke of leaving Mr. Wilson with tears in their eyes, and in the same manner as a father would wish

wish to be spoken of by his children of the same age, from whom it was probable he was about to be removed for ever.

1236. Do you know any thing of that society as it now exists, under the name of the Brenton Asylum at Hackney Wick, and the Victoria Asylum for Female Children at Chiswick?—I am not aware of its present state.

1237. Can you at all describe to the Committee the system adopted, beyond that of kindness and care?—I am not aware of the present state of either of the institutions; I can only speak of those boys whom I examined after they had been under the care of Mr. Wilson.

1238. The reformation in this case was effected by kind treatment, by treating the boy, not as a criminal with a bad character, but giving him, as it were, the advantage of a new character in a new situation?—Undoubtedly; to use an expression which occurred the other day before a Committee of the House of Commons upon Transportation, when a witness said that by sending a person to the penal colonies in New South Wales you destroyed his heart, I should say that Mr. Wilson's system might be described as saving instead of destroying the heart of the boy.

1239. Did you ever meet with a little work published by Mr. Charles Forss, describing the system now adopted at the school at Hackney Wick?—No, I am not acquainted with it.

1240. In that he recommends, as one great means of reform, and also with a view to form a character for future usefulness, that children should have mental instruction combined with a considerable portion of out-door labour, agricultural employment, so that, if they were sent to the colonies, they should know something of the principal duty they might have to perform, that is agriculture; what is your opinion of such a plan?—That appears to me to be a most valuable system with a view to the apprenticeship of those boys in the colonies, the only means that I can conceive of rendering really effective the good done in the Refuge. To the subject of colonial apprenticeship I have paid particular attention; in the greater part of our colonies there are large districts of unappropriated land which are now undergoing a change of system with respect to the disposal of land, which has the effect, and promises to have, to a much greater degree, the effect of rendering industry productive, and thereby rendering the wages of labour employed in production higher than they have been ever before; when the wages of labour employed in production are extremely high, it becomes next to impossible to obtain domestic servants; if a man can gain two guineas working at some employment, not under the constant eye of his master or mistress, he will never consent to be a servant in a house, which is always comparatively an irksome employment, and the difficulty of obtaining domestic servants in the colonies is already very great, and likely to increase from day to day, and to increase in proportion to the prosperity of the colonies; that being the case, it becomes quite clear that if young people could be sent from this country in that frame of mind which I have described as being the frame of mind of those boys whom I saw under Mr. Wilson's care, that the colonial householder would be quite delighted to pay the expense of his passage; it would be a trifle as wages, if he obtained the boys for a certain number of years; I believe that it is now understood to be the case, that there would be no difficulty at all about obtaining the whole of the cost of the passage from the master to whom the apprentice should be assigned.

1241. Then if juvenile criminals who are destitute were saved the contamination of a gaol, but, on conviction for any petty crime, were committed to one of those Houses of Refuge, and there kindly treated and instructed, you think that such children would have no great difficulty in having employment found them by colonists generally?—I think not; I have taken a great deal of pains of late years to study the state of the colonies, and I feel a conviction that thousands might be very well disposed of every year.

1242. And thus one great difficulty in the way of an effective system of secondary punishment, namely, a provision for the young and destitute prisoners, might be overcome?—Of course, several provisions would be necessary to make such a system work well; I will only mention two that occur to me now; one is, that the apprentice should go to the colony mixed with destitute boys, who have not been perhaps in the House of Refuge, so confounded with them that nobody should be able to say that he had been in a House of Refuge; that he should never go mixed with convicts, that he should never be sent to a penal colony, because I would never

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never recommend any thing in the shape of penal transportation. The second provision would be the most ample protection in the colony for the apprentice, by having an officer specially appointed to that duty; in order that the system might not degenerate into a kind of slavery, the officer in the colony should be in *loco parentis*, should have all the rights of a parent over the apprentice, and be able at once, by going before a magistrate, upon proof of misconduct, to compel the master to forfeit some penalty, and such other powers as it should be fitting for a person to exercise for the care of the apprentice in the colony.

1243. Mr. *Marshall.*] Should the apprentice be bound for a long period?—I should say, from the facility with which young men, as soon as they arrive at any thing like their strength, obtain wages from production in the colonies, that it would not be desirable to extend the term beyond the years of youth, because, if it were extended to a longer term, to 21 years of age, as it is here, the boy would pass two or three years during which he would feel that he could be doing better for himself if he were out of his apprenticeship than remaining in it; the terms, I think, should therefore be regulated perhaps by the protector himself; some boys are men at 17 and 16, and some are not men till they are 19; a great deal depends upon constitution; but at all events the apprenticeship should not extend into manhood.

1244. The reason which you have for limiting the duration of apprenticeship to a very short number of years arises from what has occurred in the colony from indentured servants being sent out there, who have, in consequence of the high rate of wages there, run away from their masters?—Unquestionably the system of indentured servants has failed universally, it may be said, and must necessarily do so.

1245. *Chairman.*] You are aware that considerable prejudice exists in the public mind on every proposal to extend the powers of the police; do you think that there is any well-founded apprehension, provided the executive duties of the police are strictly defined by law, and applied exclusively to the prevention of crime, that such an increase of power on the part of the executive government could ever be made injurious to the liberties of the people?—I am quite unable to conceive any clear reasons; but I may be almost blinded to any evil political consequences resulting from an increase of the power of the police, from the very strong impression which has taken possession of my mind, that if the police were rendered effective correctionally, the amount of crime in the metropolis would be diminished to a degree that would astonish every body.

1246. Would not that reduction of crime necessarily be accompanied with an elevation of the moral character of the people?—Unquestionably.

1247. Do you think that any permanent encroachment upon the liberties of the people is compatible with a highly informed and moral state of society?—I think not, and I should explain that by an example; I cannot conceive such a thing as extending the suffrage to the criminal population, to every body in this city, where I believe there is an army of criminals; but I can conceive such a thing after a great moral reformation, effected, as far as it could be effected, by good correctional police.

1248. In fact, those political rights that might be used for purposes of mischief by an uninformed and immoral population, may be extended, with safety both to the person and property, in a population informed and moral?—Precisely.

1249. You think a well-directed and well-defined system of police for the prevention of crime is calculated to improve the moral character of the people?—I look upon it as one indispensable means, and, besides being indispensable, as oneo f the most efficient.

1250. And you would therefore be disposed to connect the introduction of such a system generally over the country with the extension rather than the diminution of the liberties of the people?—It appears to me impossible that there should be a great extension of the liberties of the people in the present moral or rather demoralized state of the bulk of the people.

Lunæ, 5° die Junii, 1837.

MEMBERS PRESENT:

Mr. Estcourt.	Mr. Scrope.
Mr. Alderman Wood.	Mr. Maule.
Mr. Marshall.	

MR. HAWES IN THE CHAIR.

Mr. Alderman *Venables*, again called in; and further Examined.

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1251. *Chairman.*] IT is your wish, the Committee understand, to put in some paper in explanation of your former evidence?—If the Committee will permit me; this paper I hold in my hand is the report of a committee which recommended certain additional alterations which could be carried into effect only by Act of Parliament, which they recommended should be sought for. This report was not adopted by the common council; it may be considered as embodying not only my opinions, but those of a large proportion of the magistrates of the city, and also of the common council. I believe the principal reason for its not being entirely adopted arose, as I stated before, from the feeling of security which the large manufacturers and other persons carrying on business in the city have in the present plan, which rendered them unwilling to change; this plan recommends an assimilation of the day and night police together, embodying it in one system of police, under the charge of the lord mayor, aldermen, and a committee of the common council, very much, I think, upon the principle now in use in the Metropolitan Police.

[*The Report was delivered in: vide Appendix to this day's Minutes.*]

1252. Will you describe the manner in which that committee was composed?—It was a committee consisting of the alderman, the deputy and one common councilman out of every ward, of which committee I have been chairman for ten years. My opinion was not adopted by the majority of the common council, though it was by that committee.

1253. Your plan was not finally adopted?—Not fully.

1254. The great object you had in view was to place the police of the city under one central control, so that all the subordinate officers of the police should be responsible to that head, and that head responsible to the corporation?—Yes, that was the general idea.

1255. Is not that very much the principle of the plan adopted in reference to the police of the metropolis?—In some respects it is; but I have always been of opinion, the plan we recommended in the city would have given us a better police than they have in other parts of the town, for it ensured an inspection by the aldermen and common council resident in the various wards, in whom the housekeepers, generally speaking, have great confidence. It gave to the housekeepers an opportunity of ready communication in case they found any difficulty.

1256. Who were to be the actual and responsible inspectors of the police?—There would be a system of general superintendence, but they would be responsible to that committee.

1257. Who were proposed to be the actual superintendents or inspectors to ascertain that the constables did their duty?—Inspectors and superintendents would be appointed on the system of the Metropolitan Police; but they would enjoy the advantage of being under the inspection of that committee, chosen from the various wards.

1258. Which committee was to consist in part of the lord mayor and aldermen?—Yes.

1259. Why do you think that such a plan would ensure to the city a better police than that now under the direction of the Metropolitan Commissioners gives to the other parts of London?—Because of its being under the inspection of their own officers, it would be constantly under the superintendence of members of the committee, they being inhabitants of the various wards.

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1260. Would the members of the committee be out at night?—A large proportion of them are resident in the wards, and are out at night occasionally.

1261. Can they fairly undertake to look after the police at night?—They would feel it their duty; a gentleman who is present has thought it his duty to go round the city occasionally at night.

1262. Do you think you should be likely permanently to ensure the services of a number of such active persons?—I have no doubt at all that in consequence of those gentlemen being resident, and feeling themselves interested in the peace and welfare of the ward, being elected by the inhabitants, that would ensure a better superintendence on the policemen than there is in any other part of the town.

1263. Do you think that a system which has many heads, for the purposes of police, is better than one which has but one superintending authority to direct the duties of the constables?—That is an abstract opinion; I have recommended that there should be one head, but that the whole should be under the superintendence of the committee, which would sit monthly, which committee would be taken from the respective wards.

1264. In fact, a sort of representative committee?—Certainly.

1265. Subject, occasionally, to great differences of opinion?—They would have to decide upon facts.

1266. Do you think the duties of the police are so likely to be well attended to by a committee which is fluctuating, as under one permanent authority?—I have already expressed my decided opinion that it would be better that the police should be under one head; I would state, without hesitation, that there are fewer burglaries in the city than in any other part of the town; and my opinion is somewhat borne out by the circumstance of the Legislature having adopted pretty much the same plan in the Municipal Corporation Statute.

1267. In the Municipal Corporation Bill the whole of the police of the town is under the mayor and council, is it not?—A committee chosen from them very much upon the same principle that was recommended by the committee to which I have referred, and which sat some years before this Bill was brought before Parliament.

1268. Apply that to London generally, extending your ideas beyond the city, would it not come to this, that the mayor and council should be the head of the police, over the whole district of police?—That is the case in the plan I recommend, only that they depute the authority they possess to a committee.

1269. Would not the whole district, which is called the metropolis, in point of fact (exclusive of the city of London), under the Municipal Corporation Act, be under the mayor and council?—If the whole of the police were formed into one body for that purpose.

1270. Then the analogy you have drawn from the Municipal Corporation Act fails, inasmuch as the city of London occupies but a small part of the town?—It would fail if the principle of the Municipal Corporation Act were likely to be extended to the city; I am decidedly of opinion the metropolis would be far too large for the right working of any such system.

1271. The object of the question was not for the purpose of ascertaining whether the metropolis was too large for the working of such a system, but whether it is not the fact that the analogy which you drew from the Municipal Corporation Act does not bear you out that your proposed system on the whole is similar to that given to towns under that Bill, inasmuch as the police there extends over the whole borough or town?—I think it does bear me out, with submission, inasmuch as the city of London is not too large to be so managed; I think if it was to extend over the whole metropolis, amounting to a number approaching two millions, that would be far too large, and differing so much as parts of the population do in their circumstances.

1272. What is the population under the Metropolitan Police Act?—I have no document before me from which I can answer that question.

1273. What is the population of the city of London?—The population of the city of London, I think, is 158,000.

1274. Do you at all know the gross population of what is called London?—If I were to take it from the Returns made to Parliament in the year 1831, taking the metropolis in its most extensive sense, it would amount to 1,700,000 or 1,800,000, but that included some of those parishes which, I apprehend, are still without the jurisdiction of the Commissioners.

1275. The

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1275. The Metropolitan Police extends over a portion of the counties of Middlesex, Surrey, Kent and Essex?—Yes; those are included in the Return to which I have referred.

1276. The system of the Metropolitan Police works well over the districts over which it is now extended, does it not?—I should say generally it is a very great improvement, as compared with the system which prevailed before.

1277. That is a system of police intrusted to a commission over a district ten times exceeding the number of the population of the city of London, is it not?—Eight times, I should say.

1278. May it not be urged then, that if the city of London were merged in the general Metropolitan Police, as far as the efficiency and duty of the police superintendence is concerned, it would be an improvement?—I understood the Committee to be inquiring, not so much whether the establishment of police for the metropolis was an improvement on the system of police which prevailed previously to its introduction, as whether it would be an improvement, in my opinion, to introduce the police into the city, to make it a section of the whole; my opinion is, that the police of the city would not be improved by it, that the security of the city would not be increased by such a measure, for reasons I shall be happy to state.

1279. Have the goodness to state them?—I think the system which prevails in the city is perfectly different from that which prevailed in Westminster or Marylebone, previous to the introduction of the present police; we have in the city magistrates elected by the people, and, generally speaking, resident upon the spot, who are themselves locally acquainted with the circumstances of the whole of their wards; what assistance they require they receive from the common council, who are elected, and undoubtedly enjoy the confidence of the people to a very great extent with regard to their general probity, their care of the property, and the justice of their proceedings on all occasions, so far as they have come under my notice; the whole of the persons employed either as watchmen or policemen are appointed by them, and are under their superintendence; and the inhabitants of the city enjoy peculiar advantages in being able to point out, from time to time, whatever is peculiar in their circumstances. We have in the city many warehouses containing immense quantities of goods, to an extent far exceeding any thing to be found in any other parts of the metropolis; I believe there are many warehouses containing from one to six or seven hundred thousand pounds worth of goods, and goods of a very portable nature; it would become exceedingly important for the proprietors of those great establishments, and there are a large number of them, graduating to a much lower scale, to have the most perfect security as to their premises being well watched and taken care of; and, I believe, they would not be so secure from having their general chance of policemen sent from commissioners sitting in another part of the town, and very differently circumstanced from those who have had the appointment of them; I am quite satisfied a long period of time must elapse before they considered themselves secure, even if they were mistaken, and I presume they would be satisfied only, if they found themselves mistaken.

1280. In the first instance many parishes were discontented with the Metropolitan Police, were they not?—I was always an advocate for the Metropolitan Police; but it was introduced into many parishes where I believe they had no police at all; if the question is whether the police of the city could not be improved by that introduction, I need not mention the circumstance of all the banking houses being together, and immense quantities of money moving about almost unnoticed through the day; all the legal quays are in the city; very few of the quays where large property is landed of a portable nature are out of the city but what are enclosed in the walls of docks; there has been lately superadded another very important circumstance, which is the immense number of steam-boats taking their departure and bringing passengers from all parts; I do not mention these circumstances as at all wishing to impress the Committee with the opinion that these things might not be managed by other persons than the magistrates and authority of the city of London, but wishing to impress the Committee with the opinion that the circumstances of the city are very peculiar, and that they will not arrive at a just conclusion if they judge that, because the system has worked well out of the city, it must work well in the city, where the population is so very different.

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1281. Was not the great improvement which was introduced by Sir Robert Peel, in the Act establishing the Metropolitan Police, this, that he established a uniformity in the management and conduct of the police, and that he thereby enabled the Police Commissioners more effectually to pursue and to check crime?—Undoubtedly, in so far as an alteration of that kind was made, it must have the effect, but it went to supply a police where there was almost none before.

1282. Was not the uniformity of management and the centralization of the whole a great improvement introduced into the system of police under the Metropolitan Police Act?—I am not quite sure of that; I am by no means sure that the centralization of the whole was the best course.

1283. Was not that the great improvement which was introduced?—I am not of opinion that that was the best feature.

1284. Had not each parish previously its police?—I believe it had no police at all; the thing was so exceedingly bad, I hardly know how to designate it, but I should say it had none at all; the constables were so very inefficient, we were exceeding badly off in the town generally before the introduction of that Bill.

1285. Do you think there would be any advantage in breaking up the Metropolitan Police district into parts?—The Metropolitan Police works so well at present, I should be very sorry, from any speculative opinion, to interfere with it.

1286. The river is within the city jurisdiction, is it not?—It is.

1287. How comes it that the police jurisdiction is not entrusted to the city?—The city authorities have concurrent jurisdiction, that is an alteration which has taken place of late years, and, I think, a very useful one; the magistrates who have the management of that police have boats and establishments which are exceedingly well suited for the locality of that service; that is, in my opinion, rather an argument for adapting the application of a particular system of police to particular circumstances.

1288. Do you think it would be desirable that the city magistrates and the police magistrates generally should have concurrent jurisdiction to the extent of the apprehension of felons or the pursuit of thieves?—My opinion is, that it would be desirable that the warrant of the magistrates should run much more extensively than even that, in proportion as it became more important. If I were to issue a warrant in the city, I think it would be desirable that it should run after the individual to whatever part of the country he might remove; and so if a county magistrate issues a warrant, I see no real objection, whatever arguments might arise, to its being followed up in the city, without being backed, to use the technical phrase by a city magistrate.

1289. May not thieves escape out of the city jurisdiction into the county and *vice versâ* at present?—They may escape from any part of town into another; I am not aware that there is much practical difficulty in consequence of that, at least I have heard of no case.

1290. A case has been alluded to of a man committing an offence while a procession was passing near Temple Bar, and of his escaping justice by running within the bar?—In processions the usage is this, that the city police accompany the procession to that part of town where they enter the county; they are there met by a body of police of the other jurisdiction; I have seen that constantly take place, and I think any escape of an offender must have been an accident, and might have arisen equally in any other part of town; but I should be disposed myself to recommend an enlargement of the powers on the edge of different counties to such an extent as should prevent any circumstance of that kind, certainly.

1291. Would not the police of the city be better managed if the corporation were to place it under one head, and intrust it to one individual?—I have proposed that in the report which I have laid before the Committee; I have proposed that one chief officer shall be appointed during pleasure, and, subject to an annual election, to elect and conduct the whole of the police establishment, to receive and examine daily the reports and returns of the conduct of the men under their charge, the state of each district, and of any occurrence which might take place therein; to see that all the reports and returns are regularly filed, and so on, and to be the direct medium of communication with the committee or commission, making a report once a month, as he would be held responsible for the good conduct of every person placed under him; the appointment, suspension and removal of all the officers and men being vested in him.

1292. Mr. *Estcourt.*] Suppose that gentleman was competent to the task, what would be the evil of appointing him to be one of the Commissioners of Police for the whole

whole of the metropolis, including the city as well as those parts of the metropolis now under the care of the present commissioners?—I think that the city would require in some respects a different sort of management from other parts of the town; I do not mean to say that it could not be done, but I think it would be far too much for any one, two or three commissioners to undertake the whole of the police.

1293. Do you think that three commissioners would find so much to do as to be incompetent to do it, when two commissioners now undertake the charge of at least 1,500,000 individuals, whilst the district of the metropolis comprising the city contains a population of only 158,000?—I am not of opinion that the police of the metropolis are better managed for there being so large a number under one head, for it is only one head, though there are two commissioners. I am not aware of any division.

1294. How came you to recommend in the proposition you submitted to the Committee that the police of the city should be put under one head?—Because there would be but one-eighth of the number of inhabitants and a smaller space of ground under his control.

1295. You think that the police of the present metropolitan district would be better managed if it was cut up into a number of districts consisting of between 150,000 and 200,000 souls?—I have not advanced that opinion; I only say, that inasmuch as the present establishment under two commissioners was set up by Government to conduct a police where there was almost none before, it is altogether a different question from that of substituting it instead of an existing police.

1296. Are the Committee to suppose that the success of the institution is only comparatively good, that is, comparing it with the very indifferent system which which previously existed?—The success of the system has, in my opinion, been great, but we cannot tell whether it would have been equally satisfactory if it had been to replace a system acknowledged to be tolerably good before.

1297. Suppose that the institution which previously existed had been as good as that which prevailed at that time in the city of London, should you have given it as your opinion that it would have been inexpedient to have established any institution similar to the Metropolitan Police?—I think I should have recommended the improvement of the then existing system, in preference to its removal to make way for the one now existing.

1298. Can you give the Committee an outline of that you should have recommended to have been substituted?—In putting in the paper I have done, I have conveyed my sentiments of the police of the city of London.

1299. You would have recommended something like that?—The circumstances are different, but something of the same kind I have proposed.

1300. *Chairman.*] Was not this the true state of the present Metropolitan Police District before the Metropolitan Police Act was passed, viz., that each parish elected its own watchman, that they were under no control, excepting that they accidentally received from the parish officers; that they had no superintendence except that of the beadle, and that the consequence was, in many parishes there was a very great neglect on the part of the watchmen, and very inefficient persons were selected; that whilst some parishes were better than others, there was generally a great neglect of duty, which in some instances was much complained of?—I have no doubt that account is substantially correct, with the exception of the city, and it was more true of the city at that time than it is now, the city possessing within itself the power, which the out-parishes had not, of correcting the evil.

1301. That was the state of things which the Metropolitan Police Act superseded?—Yes.

1302. That in your opinion works well?—In my opinion it works very well.

1303. That description which has been just given is taken (merely converting the terms to make it applicable) from your own account of the city; would not therefore a police based upon a similar principle to that of the Metropolitan Police lead to a similar result in the case of the city?—That being so, I was not unfortunate when I answered as I did, that that was a fair description of the out-parishes, and, in some respects, of the city; but the city possessing within itself the power of rectifying those evils, they have done so in some instances; and in order to prove that, I will beg to refer to the regulations that were made in the years 1827, 1828 and 1829 successively to supersede that; they have not gone so far as I wish them, but they have in a great measure corrected those evils. They are as follow: That when any of the watchmen shall be discharged for neglect of duty or

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other misbehaviour during the time for which they shall have been appointed to serve the beadle of the ward shall report their names and places of abode to the marshals of the city, to be entered by them in a book to be kept for that purpose; that information of the discharge of such watchmen may be given to the alderman, deputy or common councilmen of any other ward in the city in case of their applying to be employed in any such other ward; that no watchbox shall be allowed to be used by any of the watchmen within any of the wards; that the whole of the nightly watchmen shall be inspected from time to time by the committee, and if it shall appear that any of them have been improperly appointed, or are inefficient, they shall be removed, and notice given to the alderman, deputy and common councilmen of the ward, to appoint proper persons in their stead; and this court recommends to the aldermen, deputies and common councilmen to direct that the watchmen in their respective wards shall all be clothed in the same manner, so that an uniformity of dress may be kept up in all the wards, and that no watchman should be appointed more than forty years of age, or less than five feet six in height; that two persons shall be employed as general inspectors of the watch under the directions of the committee in relation to the nightly watch; that such inspectors shall present reports every Monday in writing to the lord mayor or city marshal of the general state of the watch, containing accounts of any burglary or felony committed or attempted during the week, and forming, as nearly as possible, a register of all offences committed in the night; and they shall also report to the deputy of each ward any circumstance they may think necessary. The aldermen and common councilmen are recommended to require that the watchmen in their several wards give assistance, if necessary, to the watchmen of the adjoining wards, and that watchmen so assisting give an account to their superior officer, who shall enter the same in a book kept at the watchhouse. In case of fire in the night, the whole of the spare men and spare superintendents are to repair to the spot, and give assistance in the protection of property, each superintendent to be held responsible for the men under his care; and when so employed, they are to be furnished with short constables' staves, and be under the directions of the city officers, if present, or of the principal officer of the ward in which such fire happens; such superintendents and watchmen to return to their watchhouses immediately after the necessity for their services has ceased, the particulars of such duty to be entered in the watchhouse books. Every occurrence respecting the watch in any ward during the night to be immediately entered in a book kept at each watchhouse, called the "Occurrence-Book," and in the event of any charge or complaint, such book to be produced before the magistrate on the following morning, and, after being signed by him, returned to the watchhouse. That one of the city marshals shall attend wholly to the police duty, and not be permitted to be absent from London. That the constables personally serving shall not be summoned to attend at public executions, but a number of the street-keepers or under-beadles, not exceeding 25, shall be required to attend in rotation. That the committee appointed by the court in relation to the nightly watch be continued; that they hold their meetings at least once a month, for the purpose of assisting the local authorities of the wards, and receiving reports of such alterations or regulations as may be deemed necessary, and suggesting such further rules and regulations as may tend to put the nightly watch on the most efficient footing. That the occurrence-books kept at the watchhouse, with copies of the inspectors' reports, shall be laid upon the table at the meetings of the committee monthly, and that the city marshal appointed wholly to attend to the police duty, and the two general inspectors of the watch, shall attend. That the aldermen, deputies and common councilmen of the several wards are recommended to insert in their orders and regulations to their constables, beadles and watchmen, the orders they may make with regard to what stands, stations or beats the watchmen should be placed in, in what manner and how often they should go their rounds, and to specify therein the station or place of each watchman, with a description of the manner and how often he shall go the rounds of his beat; and that the superintending watchmen in each ward are required to ascertain whether there be a constant and regular supply of water in their respective wards, and if not, that they give notice to the alderman, deputy and common councilmen of such ward; and that the names and places of residence of the persons who play and have the keys of the places where the fire-engines are kept in their different districts, and the persons who have the keys of the fire-ladders, and of the turncocks of the several water-companies, be affixed up

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in a conspicuous manner in each watchhouse, and that strict charge be given to all the watchmen, that on the first alarm of fire, they give notice to all the respective firemen residing in their beats.

1304. The description you gave of the city, in answer to question 1148, applied to the year 1827?—It did.

1305. Suppose it had been proposed to introduce the Metropolitan Police Act in that year, do you think it would have operated successfully in the then state of the Metropolitan Police?—I should think that the state of feeling in the city would have rendered doubtful the expediency of introducing it into the city; at an interview I had with Sir Robert Peel at that time, that was decidedly his opinion.

1306. Mr. *Marshall.*] Is it your opinion that the Metropolitan Police can work so well, having the city enclosed in the district over which it has jurisdiction?—I have never found any practical inconvenience resulting from that.

1307. If it has been stated to the Committee by some of those concerned in the Metropolitan Police, that they have been put to considerable inconvenience from having the city not under their authority, lying completely surrounded by their district, should you be inclined to think that was well founded?—Unless I heard the statement of the case, I do not know that I could answer the question; but I would be disposed, as I have already said, to recommend any practical improvement in that respect, such as the men being allowed to enter the city.

1308. It has been stated by many witnesses that one great advantage of the Metropolitan Police is, that so large a district containing so very numerous a population is under one head, and that great difficulties have arisen from the pursuit of thieves all round the city, in districts bordering on the city, who had escaped from the Metropolitan Police officers, and got into a jurisdiction where they could not follow them?—I have been attentive to my duties as a magistrate in the city for some years, and I am not aware of any such circumstance; I have never heard, in attending at the trials at the Old Bailey, where those things, of course, would come out, any statement of the kind, nor have I heard any complaint, when sitting as a magistrate, from the police officers, nor heard of any communication from Colonel Rowan or Mr. Maine to the local authorities of the city, to mitigate any inconvenience which they found existing, which one would have supposed would have been the case if they had found such a result from the working of the system.

1309. Is it necessary to do more than to show that a very great anomaly exists in the city having an exclusive jurisdiction, in order to call upon the city to show a good reason for their having an exclusive jurisdiction from the Metropolitan Police?—I think the *onus probandi* would rather lie on the other side, to show why we should be deprived of privileges we have long enjoyed; if great inconvenience results, I should say that we should relinquish them as far as may be necessary.

1310. You are understood to say, that one great reason why you claim for the city a right to have a separate police establishment is this, that the property contained in the city is much larger for the space occupied than in the Metropolitan Police district, taken generally; if that is a good claim for the city, what answer can the Committee make to St. George's parish setting up the same claim, and calling upon the Committee to carve out St. George's parish, containing the richest population, and paying the highest rate for the Metropolitan Police, to give them a separate establishment, if the city have one?—The reason why I would say I claim respectfully the right of the city to have a separate police is, because I find that for a very long period it has existed and is in existence, and I think it can be proved that it does not work prejudicially for those who are immediately concerned, or there certainly would not be such a feeling as there is in favour of its continuance; with regard to St. George's parish, if that had been similarly circumstanced with the city of London, I should have thought the same reason would have applied, but it is not similarly circumstanced; though it possesses rich people, it contains not the sort of wealth to which I have adverted, very large stocks of goods, which are extremely obnoxious to the attacks of thieves and fire, both of which we think we possess the means of guarding against in the city, in a way not only sufficient, but very satisfactory to the inhabitants, and it is a great thing for a man's mind to be kept at ease upon such subjects, more especially gentlemen living out of town.

1311. The question did not imply that the wealth of any other district was equal to that in the city, but was intended to point out the difficulty in refusing a separate police to one of the richest districts in the metropolis, if the city police is kept up?—The one has existed for nearly a thousand years, and the other is already

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already benefited by the introduction of a new system, which works much better than that they had previously had.

1312. At the time the Metropolitan Police was instituted, why might not the parish of St. George equally have claimed to have an establishment of its own?—In St. George's parish, as in all the others, they had not the materials for improvement; they had no police but the parish constables, which they could not look to.

1313. Would not St. George's parish have had a right to call upon Parliament, when the Metropolitan Police was first established, for power to themselves to make a separate police establishment, on the same principles on which the city of London now claims to keep up their power of making a separate police establishment?—I think the city, having long enjoyed those privileges, and having, upon the whole, exercised them beneficially for a great many centuries, ought not to be deprived of them; while the parish of St. George might be answered, that the change would greatly benefit them, especially if they did not happen to possess the means of improving their police, which the corporation of London did possess; in which respect they were in much better circumstances than the parish of St. George.

1314. *Chairman.*] Is not your police very expensive?—I think it is more expensive than it ought to be.

1315. Have you ever seen the estimates of the Commissioners of Police for doing the same duty as is done by the city police at half the cost?—I have not seen such an estimate, but I believe that the excellent persons at the head of the police, if empowered, would do whatever they could to carry into effect that which was desired, at the same time they would always make a report favourable to the change; I do not think there have been any instances in which commissioners have been appointed in which they have not reported in favour of change.

1316. Have they not been appointed because some great public abuse previously existed?—I apprehend that the Crown would not appoint commissioners without being impressed with the opinion that abuses existed; the question would be, whether it should be extirpation or improvement.

1317. Do you know an instance in which a commission has been appointed to inquire into any subject or matter that has not been made the foundation of complaint in Parliament?—I should be sorry to be led to any animadversions on commissions, of the appointment of which I in most cases approve; but I need not say there have been complaints in Parliament on which no commissions were appointed, and others where they succeeded in procuring a commission.

1318. Can you mention any commission which has been appointed without some generally alleged cause of complaint?—I am not aware of any; but I do not mean to be understood to say that there has not been any.

Edward Tickner, Esq., called in; and Examined.

E. Tickner, Esq.

1319. *Chairman.*] YOU are deputy of the ward of Farringdon Without?—I am.

1320. You have been a member of the corporation for many years?—I have.

1321. Will you state your opinion of the efficiency of the present City Police generally, with reference to the prevention of crime and the apprehension of offenders?—I think, with reference to the prevention of robberies, it does operate beneficially, that there are less burglaries in the city of London than in other parts of the metropolis; but I think that would be the case upon a general organization of our police, and one uniform system; indeed, I am inclined to think that robberies and disorders in the city of London would be less than they are now by such a system being established within the city, and I have always contended that.

1322. Is the police force adequate at present for the suppression of any unforeseen tumult?—I do not think it is; the only force that could be applicable to such an emergency is the police which the court of aldermen have established, but they are not sufficiently numerous, nor do they constitute a force of sufficient power to suppress any serious tumult in the city of London; that police is very efficient; the men are extremely well selected; they are very intelligent, well-behaved and able men; I have seen cases that have tried their temper severely, which I could not have borne; but I have seen those men behave with so much intelligence, and such

such forbearance and moderation and good temper, I think there is not a better body of police any where than those appointed by the court of aldermen, but they are not in sufficient force to meet any emergency in the city of London.

1323. What is the number of the present police of the city of London?—About 100, the entire number, including the marshal and marshal's men, who are more for pageantry than for purposes of police; the board constables, however good the institution of ward constables might have been at one time, I think have become entirely obsolete, and are almost useless, they can scarcely be said to be under control at all; but it is a great burthen to the city, for the inhabitants are liable to be elected to that office, but they never serve but by substitutes, consequently the provision for those ward constables, who are of so little use, operates as a great tax on the city; then there are the ward-beadles and street-keepers and there is the nightly watch, that is under the control and management of the respective deputies and common council of the different wards; they are therefore under distinct boards of management without any communication with each other, without any co-operation or general system, or any efficient controlling head, so that, to use a figure of speech, they may be called a rope of sand.

1324. Is not the system very costly?—There are inspectors and superintendents of this power; there are nearly 1,100 persons under the various denominations I have enumerated, at the cost and aggregate expense of about 46,000*l.* a year; I am quite satisfied that less than half the number properly organized would perform the duty; some districts in the wards in the city of London intersect and divide each other in the most irregular manner; those wards divide the beats for the watchmen; if the city was properly divided and the beats were arranged without regard to wards, less than half the number of persons would be more efficient than all the number now employed, and a very considerable saving, of at least 15,000*l.* a year, be made; this has been matter of calculation, and it is matter of fact that at least that might be saved and a greater efficiency obtained.

1325. If these two propositions were made to you, to retain your present police in its present state, or to give you the benefits of the Metropolitan Police, extending it and applying it to the city, which should you be disposed to select?—If that alternative is forced upon me, I should have no hesitation at all in making my election for the Metropolitan Police.

1326. Will you describe to the Committee what course you would recommend for the effectual prevention of crime and the protection of property without the adoption of the Metropolitan Police?—I would sweep away the present system, if it can be called a system, altogether, all those officers I have denominated; I would establish a police for night and for day, with a regular succession of relief, in which there should be no interval, for at present there is an interval between the time of the aldermen's police going off duty and the nightly watch being set, in which there is no protection at all; I would have this force to consist of one body of men under one efficient control, regulated on one well-digested system, with a regular succession of reliefs for night and for day.

1327. When you say under one efficient control, do you mean that it should be under the direction of one person, responsible to the city for his conduct?—That is precisely what I mean; and I would have the city represented by commissioners, precisely similar to the present commissions for paving, lighting, cleansing, and the sewerage of the city of London.

1328. Would there be any objection to placing such a person in communication with the Commissioners of the Metropolitan Police, allowing them and their men to enter the city, and giving power to the city constables, in the case of disturbance, to act in the county, so that there might be a systematic co operation in all matters of police?—In my opinion there would be not only no objection to it, but that is greatly desirable, if not absolutely necessary; I am for taking care of the charters and the parchments, and I have a very strong opinion about not meddling with the city's distinct rights, but I would have the city fall in with all the improvements going on; I would have the city co-operate with them, and without doing such an outrage as would tend to embarrass the city and destroy the distinction which it has obtained from time immemorial; I think it is necessary so to arrange matters as that all the good may be effected by the arrangement of a Commission of Metropolitan Police, without doing that which would excite a very strong feeling in the city, and I should feel so strongly myself, I should be almost inclined to try my hand at agitation if it was attempted. We have the instances of the commissioners of pavements in the city of London and the com-

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missioners of sewers, where I have been some years a member; that commission consists of all the aldermen, all their deputies, and one common councilman from each ward; they meet at Guildhall once a week; consequently there is a representation of all the circumstances of every locality of the city of London, and whatever is required peculiar to their localities is accounted for by the commissioner who represents that locality; and with regard to lighting and pavement and the sewers and all those important operations, I think there is no part of the world so well managed as the city of London, and that arises from all the localities being efficiently represented; I would apply that to police; I would have commissioners from each ward who might represent to the general police commission the peculiarities of each district, and by the peculiarities of each being represented, thus the general management would be improved, and I think that would be more satisfactory and more beneficial than a system worked by commissioners in Whitehall-place, unacquainted with the localities of the city; I think that such a system so worked would be superior to any yet in existence.

1329. That commission intrusting the superintendence to one individual?—Undoubtedly, I would have the whole placed under the direction of one individual; I would have the city's jurisdiction forgotten if it became necessary, whether in the city or out of the city, that the police should not know such a distinction; that in the case of any tumult or other circumstances rendering it necessary, it should co-operate with the Metropolis Police.

1330. In whom would you vest the patronage of the police under the system you have recommended?—I think the principal superintendent should have that appointment.

1331. And thus be made really responsible for the appointment of every individual?—I would make him responsible for the appointment of proper and efficient men.

1332. The appointment of that individual you would place in the hands of the commission?—Yes.

1333. And the superintendent you would place in immediate communication with the Metropolitan Commissioners, and in order to render the force more efficient, you would recommend that the city police should have a concurrent jurisdiction with them?—I certainly would have him in communication with those commissioners, so that they might act together for the general benefit; I have not the smallest doubt about that.

James Anderton, Esq., called in; and Examined.

J. Anderton, Esq.

1334. *Chairman.*] YOU are a member of the corporation of London?—I am.

1335. How long have you been so?—Not very long.

1336. You have heard the evidence given by Mr. Tickner?—I have.

1337. Do you concur in his opinions?—I do. With regard to the nightly watch and the watchhouses in the city of London, nothing, in my opinion, can be worse. In October last, I visited all the watchhouses in the city of London in company with the then lord mayor, Alderman Copeland, and Alderman Wilson; we found that 14 of the watchhouses had cells, and 16 were without; many of their cells were nothing but cupboards; they had no urinals, no place of easement for the prisoners; they were most of them in a most wretchedly degraded state; we found that very few of what they call the ward constables were serving in their own right, they were almost all of them deputies, men of the lowest class; they are paid in some wards as much as 16*l.* a year, whilst in other wards they are paid only 8*l.*; we also found that the wards were under very different managements, that some of the watchmen that were appointed had lanterns, whilst in the adjoining wards they had no lanterns; in some of the wards the watchmen are relieved every two hours, and in some of the wards they are not relieved at all; there is no union nor co-operation. I pointed out to a watchman a man and woman on the opposite side of the street in a very indelicate situation; he said, "Oh, that is not in my beat, there is a watchman on that side;" I said, "Do you mean to say you must not go over to prevent that?" he said, "Oh no, unless it is a riot, or something of that kind." The watchhouses themselves are in a very bad state, very unfit for the purpose. In the ward of Farringdon Without we have no fewer than six watchhouses; one of them, in the parish of St. Bride's, I would state, is surrounded entirely by brothels, the one in Blackhorse-court; there is a complete avenue of brothels, and the watchhouse is in the centre of them.

1338. Does

1338. Does the deputy visit that watchhouse?—I went to it when the streets were very thronged, and found the night-constable was not there at half-past ten o'clock, but I found that some of the day police had been stationed there by the superintendent; I then went to St. Dunstan's watchhouse, and I found that the night-constable had not been there at all up to that hour; and whilst I was there, there was a report came that there was a strong smell of fire in the street, and there was reason to fear that St. Dunstan's church was on fire, but there was no night-constable there to attend to it if it had turned out so. In my opinion, nothing can be so important as to amalgamate the day and night police of the city of London.

J. Anderton, Esq.

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APPENDIX.

PAPER delivered in by Mr. Alderman *Venables*.

NIGHTLY WATCH AND POLICE.

Appendix.

THE committee appointed in relation to the nightly watch and police of the city of London having, in consequence of their unanimous resolution, "That in their opinion the system of police within this city, as well by day as by night, was imperfect and required revision," referred it to a sub-committee to consider and prepare a plan for an improved system, the sub-committee accordingly prepared the outline of a plan for the improvement of the watch and police, and laid the same before the committee, who were pleased to refer it again to the sub-committee to prepare a more detailed plan for carrying into effect the object proposed, and to cause the same to be printed, and a copy to be sent to the several members.

The sub-committee have accordingly proceeded in the consideration of a more detailed plan; and having had before them the returns from the several wards of the number of constables annually elected at the respective wardmotes, and the duties performed by them, they find that a great majority of the constables so annually elected do not execute their office in person, but serve by substitutes, and frequently send their porters and servants to do their duty during the sessions and at executions, to which, with the nightly attendance, by rotation, at the watchhouse of their respective wards, the duties of such constables appear to be, of late years, almost entirely confined; and that no attention is now paid by the constables to the removal of nuisances and obstructions in the public streets, at fires or other cases of emergency, or upon public ceremonials. They also find that these duties frequently are not performed by the substitutes themselves, but that these latter are in the habit of hiring the night watchmen and others to attend for them.

The sub-committee have also had before them a return of the number of beats for the night watchmen in each ward, and of the number of watchmen and other officers who are in actual employment at any one period during the night, a copy of which return they now annex, and from this it appears that there are about 320 beats averaging about 250 yards each in extent: for instance, those in Bassishaw Ward being only about 80 yards, and others in the wards of Farringdon Within and Without, 300 and 400 yards.

Upon a review of the whole subject, the sub-committee are of opinion, that it is important that some measures should be adopted without delay for consolidating the whole police establishment of the city, so as to render the same at all times available for the general protection and security of its inhabitants; and for abolishing, as far as it can be legally and properly done, the present system of electing and appointing ward constables; and, after the most mature consideration that the sub-committee have been enabled to give the subject, they are of opinion that the present system of the day and night police and the nightly watch should be so consolidated that one uniform and efficient force should be at all times on duty, as well by day as by night, for the security of person and property, the prevention of crime, and the preservation of the public tranquillity; they have accordingly prepared a plan, which they conceive will be best calculated to accomplish so desirable an object, and which they submit to the consideration of the committee, as follows:—

That the police establishment of the city, as connected with the regular day and night duty, be placed under a distinct system of management; and that such system of management be under the direction and control of a committee or commission, consisting of the lord mayor and all the aldermen for the time being, and one commoner from each ward, to be annually elected by the court of common council.

That an office be provided by the corporation at the Guildhall for the purposes of the police establishment, where attendance should be given daily, from nine in the morning till five in the afternoon, and at such other times as may be found requisite for the public service.

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That the city be divided into Six Districts, to be called the Mansion-house District, Tower District, Bishopsgate District, Cripplegate District, Holborn District, Blackfriars District, at each of which a night-station shall be established, where, and where only, night charges shall be received.

That each district be divided into sections, and each section into separate and distinct beats.

That one chief officer be appointed by the committee or commission during pleasure, and subject to an annual election, to direct and conduct the whole of the proposed police establishment;—to receive and examine daily the reports and returns of the other officers of the conduct of the men under their charge during the time they are on duty, of the state of each district, and of any occurrence which may take place therein;—to see that all the reports and returns are regularly filed, or fairly entered into books, so as to be easily referred to whenever occasion may require;—to be the direct medium of communication with the committee or commission, to whom he shall make a general report of the state of the police throughout the city, once at least in every month;—and, as he will be held responsible for the good conduct of every person placed under him, the appointment, suspension and removal of all the officers and men to be employed in the proposed police establishment be vested in him; but previous to the appointment or the promotion of any officer, he shall report in writing to the committee or commission his reasons for making such appointment or promotion, and the previous services of the person so to be appointed or promoted, and receive the approval of the committee or commission.

That for the performance of the day and night duty contemplated by this arrangement, a number of constables be appointed, amounting to four hundred and eighty (one out of every ten to be a conductor), who should all be resident within the city, and their residences so designated that immediate recourse can be had to them whenever their services may be required.

That, in addition to the four hundred and eighty constables, there be appointed twelve inspectors and three superintendents.

That every conductor when on duty with his party should have the charge of a section of his district, and each constable a distinct beat appropriated to him within that section, to be varied from time to time as the inspectors or superintendent may see fit. The conductor to be prepared, on going off duty, or at any time that he may be required, to deliver to the inspector or other superior officer a report of the conduct of the men under him, and of the state of his section.

That an inspector be placed over every four conductors and thirty-six men, for whose conduct, discipline and order he shall be held responsible, as well as for the safety of the sections to which the conductors and the men placed in his charge may be appointed, to arrange and superintend the sections and beats to which the conductors and men may be placed; to receive and examine the reports from the conductors of the conduct of the men, and to prepare and deliver daily a report of his district to the superintendent; for which purpose he should occasionally, during the time he is on duty, perambulate his district, and see that the officers and men under him are correctly performing their respective duties. At other times to be at his district station, to receive and dispose of the charges brought in, and to enter the same into a book to be provided for the purpose, and to be ready to attend with the spare men of his district upon every occasion of fire, tumult or other emergency, and to call out the constables not on duty, if necessary, under the directions of the superintendent.

That one of the two inspectors, who will be on duty together on each district, do take the general charge of the duty throughout that district, see as much of it as possible, visit the men, receive the reports of the several conductors, and hear from them frequently the state of all parts of the district; and the other remain in the watchhouse of the district to receive charges, complaints and all applications for assistance, &c.; and that these officers do relieve each other by exchanging the duty for half the night or otherwise, as they may mutually agree upon.

That the inspectors be empowered, in cases of persons charged with petty misdemeanors who may be brought by any constable or officer to any watch or station-house within their respective districts during the night-time, if they shall deem it prudent, to take bail by recognizance, without fee or reward, from such persons, conditioned for their appearance before the lord mayor or sitting magistrate, and that they enter in a book, to be provided and kept for that purpose in every watchhouse, the name, residence and occupation of every such party and of his surety or sureties, and lay the same before the lord mayor or sitting magistrate at the time and place when and where the party is required to appear.

That a superintendent be appointed to every two districts, and held responsible for the general good conduct and good order of all the officers and men appointed to those districts; to issue his orders and directions to the inspectors and conductors, and to see that they and the orders and directions of the chief officer, and all other orders and regulations that may be agreed upon respecting the police within his district, are promptly and strictly obeyed; to inspect daily the books of the officers of his district, and see that they are correctly kept; to examine carefully and sign all reports and returns that may be required, and

deliver

deliver them to the chief officer; to make himself acquainted with the manner in which the duties are performed by every individual placed under him; to inspect the whole of his districts from time to time, to be enabled to furnish particular information respecting the state of every part of his districts; and to be in readiness at all times to give his directions and issue his orders respecting the calling out upon any fire, tumult or extraordinary disturbance taking place, or upon any other emergency, those men who may not be on actual duty, and forthwith to investigate, as far as he possibly can, the cause of such accident and emergency, and the particular situation and conduct of the men at the time, in the section where it may occur; and that such superintendent should be required to reside in or as near as possible to his principal district or station.

That a regular routine of duty be observed.

That one hundred of the constables be employed in the performance of the day duty.

That the night duty be performed by two divisions of two hundred and forty each, the first division to be put on duty when the day constables are going off, and to remain until they shall be relieved by the second division, who shall continue on duty until the division appointed for the day duty shall relieve them.

That the first division for the night duty do consist of two hundred and forty out of the three hundred and eighty who have not been employed in the previous day duty; and the second division, of the remaining one hundred and forty of the three hundred and eighty and the one hundred who had been employed in the preceding day duty, and so on by rotation, day by day, those for the day duty being taken from the division who had performed the first part of the preceding night duty.

With regard to the specific hours at which the performance of the respective duties are to commence and finish, it must be obvious that some alterations will be requisite from time to time, according to the seasons of the year; but by a regular rota being observed, the superintendent and inspectors will be enabled so to equalize the duties of the constables that the periods for being on duty will not exceed on an average nine hours out of the twenty-four during winter, and eight hours out of the twenty-four during the summer: by the foregoing arrangement there will always be in each district a small number of constables on duty who may be so stationed as to supply occasional absences, and be ready for any extraordinary duty that may arise, and where a greater number may not be thought necessary.

That a small number from each inspector's division, making about eighty-five in the whole (if so many be necessary), under the charge of a superintendent and three inspectors, do attend in rotation to perform the duty at common halls and public ceremonials, and also at executions, which duty is now performed by the ward constables when summoned by precept from the marshals of the city for that purpose; and that a sufficient number, under the charge of a conductor or conductors, do also attend at the Old Bailey during the sessions, for the purpose of keeping good order in the avenues to the courts.

That no officer or constable do leave his district, section or beat until relieved by another, unless ordered so to do by the superintendent or inspector.

That every officer and constable be liable, in addition to the routine duty before specified, to be called upon to supply any vacancy that may arise amongst the officers and constables whose turn it may be to go on duty, and be ready to attend when required at all fires, tumults or any other occasion, without any additional pay or allowance, their whole time and attention being expressly understood to be devoted to the performance of police duty exclusively.

That a registrar of the names and places of abode of all the officers and men be kept at the office, and that each inspector be furnished with the like information, so that when their services shall be required, the utmost facility may be afforded of procuring the same, with the least possible delay.

That the salary of the chief officer, and the expense of providing and establishing the principal office and station for the purposes of the proposed police, and the clerks and other incidental charges, be defrayed by the corporation out of the city's cash.

That the pay or wages to be allowed to the several officers and constables be as follow:

Superintendents - One hundred and fifty pounds per annum, each:
Inspectors - - - - One hundred and ten pounds per annum, each:
Conductors - - - Twenty-five shillings per week, each:
Constables - - - - Twenty-two shillings per week, each.

That the before-mentioned pay or wages to the conductors and constables be subject to a deduction of such sum as may be deemed expedient for the formation of a superannuation fund, uniform clothing, and for such other advantages as they may derive under the proposed establishment.

That the beadles of the several wards should be appointed, under the directions of the aldermen, deputies and common council, to collect the monies required for the purposes of the proposed police; and as the beadles will be, by this plan, relieved from a considerable

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portion of their present labours, they may be appointed to perform other duties in the ward, which may relieve the inhabitants from some of those duties they are now called upon to perform, and which are considered burthensome.

The expenses, according to the foregoing arrangements, and including the sum of one thousand pounds per annum for the watchhouses, which it will be necessary to retain for stations, are calculated to amount to the sum of 30,510 *l.* 8 *s.*, which it is proposed should be raised by the several wards, in such proportions and in such manner as may be agreed upon by the court of common council; the same to be paid into the chamber of the city, and to be drawn out and disbursed under the control and directions of the committee or commission.

The actual expenses of the several wards of the city under the present system of the nightly watch, according to the returns which have been made, amount to the sum of 36,298 *l.* 17 *s.* 1 *d.*; besides which a considerable sum of money is annually collected from the inhabitants of some of the wards, by voluntary subscriptions, for street-keepers and other officers, and nearly four hundred constables are annually elected at the different wardmotes, which office every inhabitant is liable in turn to be called upon to serve, or provide a substitute; and in addition thereto the corporation have for a number of years past incurred a very heavy expense in respect of the police, as well by night as by day.

It appears from the foregoing statement that under the present system the expense of the *nightly watch alone* amounts to the sum of - - - -	£.	36,298	17 1
Whilst, by the plan now submitted, embracing the duty both by day and night, the expense (exclusive of the principal office, which it is contemplated should be borne by the city) will amount to the sum of - - - - - - - - - - - -		30,600	8 –
So that an annual saving of - - - - - - - - will be effected, and the inhabitants of this city consequently relieved to that extent, independent of the advantages which would result to them from the adoption of the proposed system.		5,698	9 1

As the marshalmen would be relieved from a very large portion of their present duties by these arrangements, they would consequently be placed at the disposition of the magistrates, for the execution of the various processes and orders issuing from the justice-rooms at the Mansion-house and the Guildhall; and it is recommended that measures be taken to render these officers as beneficial as possible to the general interests of this city.

The sub-committee, in submitting the foregoing plan to the consideration of the committee, beg leave to state, that although, in compliance with the wishes of the Committee, they have endeavoured to draw out such a plan for improving and consolidating the police of the city as is in their opinion best calculated to obtain the object desired, yet it must be liable to such alteration as experience, and a careful attention to the subject on the part of the members of the committee or commission that may be appointed, and of the chief officer, may from time to time dictate.

If the Committee should approve of the foregoing plan, and it should be confirmed by the court of common council, it is recommended that an application be immediately made in the present Session of Parliament for an Act, to enable the corporation to carry the same into effect.

Lunæ, 12° *die Junii*, 1837.

MEMBERS PRESENT:

Lord Hotham.	Mr. Marshall.
Alderman Wood.	Mr. Ross.
Mr. Clive.	

MR. HAWES, IN THE CHAIR.

Mr. *Richard Hicks*, called in; and Examined.

Mr. *Richard Hicks*.

12 June 1837.

1339. Mr. Alderman *Wood*.] ARE you deputy of one of the wards of the city?—Yes, of Castle Baynard Ward.

1340. How long have you been so?—Between six and seven years.

1341. I believe you have been in the corporation a good many years?—About eight years.

1342. During

1342. During that time has your attention been particularly called to the mode of watching within your ward?—It has.

1343. I believe some time since the corporation introduced a Bill into Parliament for establishing a regular day and night watch?—Yes.

1344. And you were an opposer of that Bill in the corporation?—Yes.

1345. That was a Bill establishing about 400 day and night police; was that about the number that was recommended at that time?—Yes, about 420.

1346. Will you state you reasons to the Committee why you opposed that measure, and what are your objections to it?—My objections to establishing a day and night police are founded partly upon my own judgment, and I may say principally upon the opinion of the inhabitants of the ward of which I am a member; I have before me a copy of a series of resolutions which were passed at a meeting held in the ward, the alderman in the chair, on the 20th March 1833, wherein they expressed their complete approbation of the system of watching the ward, and a desire that no change should take place for amalgamating the day and night force into one body. I agree with them in the reasons upon which their resolutions are founded, which I may state as my own. In the first place they have a control individually over the nightly watch, which they consider they would lose if there were an uniform force under the control of the aldermen as magistrates; if any cause of complaint arises, from neglect or impropriety of conduct, or any other matter which may be the cause of complaint against the watchmen, by a complaint being made the following morning to the deputy of the ward, such matter is usually inquired into and determined upon its merits; it was an argument used by the inhabitants in my own presence, that if a board were established or they had to attend upon the court of aldermen, they might have to wait sometimes an hour or two before they were called in in their turn, or it might be several days before the case might be heard, which would cause considerable inconvenience to them; and therefore finding the present system worked exceedingly well in the ward, it was their desire that no change should take place; and one of the resolutions was that the aldermen and common council of this ward be requested to oppose the adoption of the expected report of the watch committee, as well as any application to Parliament, that may be founded thereon, until time has been given for the inhabitants of the wards of this city to express their opinions thereon. There have been one or two meetings called since that, at which the subject has been discussed, and invariably the inhabitants of the ward have continued of the same opinion; I have not seen these papers since 1833, but I have brought with me a copy of a petition which was presented to the common council by the aldermen of the ward, and which was signed by 200 of the most respectable inhabitants of the town; and I have a note with respect to that, which states that only two persons in the ward refused to sign that petition.

1347. Will you state the substance of that petition?—The prayer of the petition was, "That your petitioners humbly pray this honourable court to reject the recommendation contained in the report of the 'Day and Night Police Committee,' so far as respects the nightly watch throughout the city of London; but that your honourable court will be pleased to make such orders as may be necessary with regard to the ages and abilities of the men to be employed, and for enforcing uniformity of clothing, of duty and of pay for the nightly watch throughout this city, whereby your petitioners are convinced the nightly watch will be more effective for the protection of the lives and property of the inhabitants of this city, than by the alterations proposed by the day and night police committee to be carried into effect." In confirmation of the views of the inhabitants in that petition, I have some documents to show the nature of the returns that have been made from time to time of the burglaries and so forth committed in the city, but I can state that for 30 years past there never has been a burglary in the ward of Castle Baynard but the parties have been taken into custody, and brought to trial for the same. A return was called for last year by the common council of the number of burglaries, street robberies, &c., and of the expenses of the ward in respect of them; I sent to the ward clerk for a copy of that return, but I am sorry to say he was out of town, and therefore I was unable to procure it; but I happen to recollect that the burglaries were none, and the street robberies one, in which the party was taken. It may be requisite that I should give an account of the number of men employed in watching the ward, and that I can state from a paper I drew up in 1833, expecting to be called before a committee which was then sitting: the ward-constables are elected by the wardmote, to attend all precepts by themselves

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or substitutes, and I am very anxious the Committee should understand that substitutes for the ward-constables are never permitted to serve in Castle Baynard ward, unless they have previously served the office of constable in their own right, that is, in respect of being housekeepers; there are two beadles, an upper and an under beadle; two superintendents and two patrols; the two superintendents and two patrols come on duty throughout the year, at five in the evening, and generally go off their duty at eight o'clock, when the nightly watch are set; they commence duty again on or before the watch go off, say at five or six o'clock in the morning, according to the time of the year, and remain on duty till eight; there are 15 watchmen appointed to fulfil the duty of the ward, and four other men, who are called the bye-men or supernumeraries, and they attend every night; in case the watchmen should be ill or cannot attend, they take that duty; the beats of the ward I had measured shortly after I had the honour of taking the office of deputy, and I am unable to state, from recollection, the number of yards contained in each beat the watchman had to walk over, but it was so regulated that as near as possible each beat averages about 10 minutes to walk over.

1348. What is the whole number of watchmen?—Nineteen; 15 watchmen, with two superintendents and two patrols.

1349. What is the amount of the population over which they watch?—I think we reckon we have about 400 houses; the district runs from near Newgate-street, down Ave Maria-lane and St. Andrew's-hill, taking half of Earl-street, and running eastward towards Paul's Wharf in Thames-street, up Lambeth-hill, taking in the western side of the Old Change, and entering St. Paul's Churchyard again.

1350. Can you state the population of the district?—No, I do not think I can state the population; I should have brought several other books if I had seen our ward clerk, expecting such a question to be put; but we take the number of housekeepers at about 400, perhaps rather under than over; these watchmen have to patrol or walk over their beats four times an hour; they are on duty two hours, and rest in the watch-house one hour; consequently, there are 10 watchmen on duty, and two superintendents or patrols, making 12; five watchmen in the watch-house, with one superintendent, and one patrol, making seven; that relief is always ready to give any assistance in case of fire, disturbance or disorder of any kind which may take place any where in the neighbourhood, whether in an adjoining ward or any where else in which they are within call in Castle Baynard; there are no lanterns nor any weapons carried in their hands; the call of time, perhaps that is the most antiquated part of their duty, but it has been desired by the inhabitants once or twice that it should be so; they are anxious to have it so continued; we for some years past have taken no man on duty under five feet ten inches in stature or over 40 years of age; perhaps the Committee will allow me to hand in the regulations which are given to every man who is engaged.—[*The same was handed in.*]—We also object to any parties having any occupation or day labour, by which they might be unfitted for their night duty; they wear an uniform police dress, and I believe, in fact, so nearly approximate to the city day police, that on occasions of state when the Queen has been coming into the city, and other matters which require police assistance, the 14 men from Castle Baynard have generally been offered to the assistance of the aldermen, and have done duty in the neighbourhood of St. Paul's Churchyard like the rest of the police.

1351. But they are not sworn in as constables?—No; that is the distinction which has been made the chief ground of opposition. I made a note, which I have here; I believe it is in contradiction of something which was said before the committee of 1833, that the deputy and common council pay all their own expenses in the wards out of their own pockets; I never knew any thing charged to the expenses of the ward beyond 10*s.* 6*d.*, which is paid when the ward meet, I think four times a year, to transact the quarterly business, to meet the inhabitants, and hear any complaint or other matters connected with the ward; having no vestry or other place to meet in, we pay half-a-guinea for a room in the Horn tavern, for the use of that meeting. I do not think I need travel into a detail of what have been the divisions and the arguments in the common council for the last two years, that is a matter of history, and does not require any observation from myself; but with respect to the observation as to their not being sworn constables, one of the chief objections of the inhabitants generally is, that were they sworn in as constables, they would be so completely under the control of the aldermen, that instead of the inhabitants being satisfied that they would have these

these men around their own habitations (I do not mean to say from any sudden whim or any thing that might appear offensive), the aldermen might require their services for matters of parade, or state or other considerations, and these men would be called away to fulfil other duties, when perhaps the quiet of the city would require them in their own locality. Sometimes I have been myself with the judges, and so on, at St. Paul's; and I should say, one-half of the police that were required to form a line for us to walk from the lord mayor's parlour to the cathedral, might be required in the ward. They would be so far very well to keep the crowd from pressing upon us, but the question is, whether disturbances might not arise, and the assistance of those men be required to allay them; for myself individually, I can have no objection to a change, because, however it may have been said that the deputies have great patronage, great power, large balances in their hands, and so forth, I never appoint one of these men at all. If a vacancy suddenly occurs, I merely put a person on till the common council meet, and report the case, that they may either appoint him or reject him. It was, four or five years ago, a source of trouble and great anxiety to me; I was scarcely ever free from some one or other calling upon matters connected with the ward, but I may say for the last three or four years, I have not had two complaints brought before me against the watch; it goes on so quietly, that I almost forget I am connected with the nightly watch.

1352. Did you ever appoint a watchman, and has it ever occurred that the common council has rejected that person?—I should say never.

1353. Then, virtually, you have the patronage?—Yes, I so select the men; but I will say this, that I have never yet taken a person without having made the strictest inquiry, and that I have repeatedly refused the recommendations of inhabitants, and I have told the inhabitants to their faces, I wished them never to send me a person, for I should as soon refuse as accept him if he did not suit.

1354. You said the inhabitants objected to the proposed change, because the constables would be called away from their habitations by the aldermen?—What I intended to say was, that they would not be so much around the habitations of the inhabitants.

1355. The aldermen would call them away instead of their being around the habitations of the inhabitants?—Yes.

1356. Have you not found in the present day police a geat activity on every occasion, in every public place or public duty?—In the city of London, decidedly, I have found considerable activity; I may state that I come to town from Wandsworth at four o'clock in the morning, and I frequently see five, six and seven policemen talking together at the corner of a street, when the inhabitants think they are watching their houses.

1357. Where is it you find these men congregated together?—As I come to town from Wandsworth, and, three years back, when I came from Brixton.

1358. That is not in the city of London?—No, in Surrey.

1359. It is of the Metropolitan Police you speak?—Yes.

1360. At what hour of the morning was this?—Four, five and six o'clock.

1361. Whereabouts have you seen them congregated?—At present, frequently at Kennington-lane.

1362. Is there not a station-house there?—No, the station-house is opposite Mr. Slade's house in Walworth; I have counted seven of them together two or three times at the Horns at Kennington, but I do not go that way now; I have counted five at the Queen's Arms in Kennington-lane, and frequently three or four; when they see me they separate, for I have drawn the attention of the inspectors to it, thinking it ought to be noticed.

1363. Mr. Alderman *Wood.*] Then the objection of the inhabitants of your ward to the proposed change arises from their wishing to keep the whole of the force which belongs to the ward within the ward?—That is their impression.

1364. Then whatever might be the circumstance requiring aid at one part of the city, they would wish that their force should not go to that part of the city, but remain in the ward?—They never expressed such a wish; I may mention that I have had one or two letters of thanks from parties not connected with the ward for the services of the watchmen in assisting at fires, and it is the custom and the regulation of the ward for the watchmen to attend at any fires that may occur within a mile of the place.

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1365. You spoke of four men going on at five o'clock and remaining till the watch are set?—Yes.

1366. And that sometimes is nine o'clock in summer?—Yes; I think, for one month in the summer, it is as late as 10 o'clock, but I am not quite clear upon that point.

1367. As you require 12 to be out in the greater part of the night, 10 watchmen and two superintendents, does not that leave your ward rather sparely watched for those two hours after the police are off?—My only answer is, that during those hours, for the last 30 years, no burglary has ever been committed but the parties have been taken into custody. I have in my hand a return from the town clerk's office for the year 1833, from the several wards of the city of London, of the number of burglaries, street robberies and night charges within the same, during the time the nightly watch and morning and evening patrol are on duty, in the year ending Michaelmas 1833.

1368. Is that returned from your ward?—From the whole of the wards generally.

1369. Have you any return from your own ward of the number of street robberies which have been committed between the hours when the police go off and the nightly watch is set?—I have a report made to me the next morning if any one is taken up for a street robbery.

1370. You can tell, as far as your own men have been concerned, but you cannot speak of the street robberies which occur in other places?—No.

1371. You may have heard, perhaps, that great complaints have been made of robberies in Fleet-street, Ludgate-hill, and so on, at those hours between the time when the police go off and the watch is set?—The only complaint that I have heard particularly was when the thieves made it a merit to rob the late lord mayor, in the time of his mayoralty, while one of the aldermen was walking with him.

1372. You have not heard that complaints have been very often made at the Mansion-house upon that subject?—No.

1373. Was not the Bill which was brought into Parliament to put the police under the control of the common council, that the selected men in the police might be under the control of the common council as much as under the aldermen?—I did not so understand it; there was a talk of it, but it was never clearly defined.

1374. The Bill itself went through the House of Commons?—Yes; and was thrown out in the House of Lords.

1375. Did not that Bill authorize two common councilmen, the deputy of each ward and another, together with the aldermen, to carry that Bill into effect?—I never saw the Bill; I understood it was to be framed something upon the principle of the commission of sewers.

1376. There being two common councilmen to one alderman, wherein would the control have been continued in the aldermen?—Because they would be sworn constables; and that was the reason for opposing it. The opinion of an eminent counsel was taken, and he said "It is of no use to mince the matter by a diversity of words; the fact of their being sworn constables places them under the direction and control of the aldermen as magistrates."

1377. Has not the common council a control over them now?—Assuredly that is the reason that we object to their being sworn constables. One observation more I wish to make; I have repeatedly drawn the attention of the inhabitants in the wardmotes to this fact, as I was desirous they should not be misled upon the subject of the nightly watch and the day police. I have told them there is no doubt you may be watched and protected at considerably less expense than you are now at. It is for you to weigh the considerations upon each side, and decide which you will choose. A great portion of the inhabitants of Castle Baynard live out of town, and even are so careless as to leave their premises without lock and key, of which I entirely disapprove. However, they choose to do it, and they say, "We are anxious our property should be protected; we are content;" that is the ground continually taken. We would rather pay a higher price to have the power and control ourselves; for, by the new system, we should have a less number of men; and I may state that is one of the principal objections to the New Police. I am aware it is done under an economical principle, but three men are put where ought to be four. I have stood upon my premises at Wandsworth for an hour before a policeman has come by. Now I cannot stand at my own door in town for a quarter of an hour without meeting one.

1378. *Chairman.*]

1378. *Chairman.*] Do you think it is necessary to watch country districts as closely as a thickly populated city?—Certainly not.

1379. Will not that explain the difference which you state of the frequency with which you observe a policeman at your own door in town, and the infrequency with which you meet a watchman in the country?—It may be; I think an hour is too long for a beat to extend, my house being close to the road, not away from it.

1380. Do you think a police formed with reference to local interests, such as you have described, can obtain that knowledge of the persons of thieves generally which is so desirable, with a view to prevent crime?—I am satisfied they do, in my own view.

1381. Do you think the constables of your ward know the thieves that inhabit Whitechapel, for instance?—I should doubt that.

1382. Do you not think it desirable that the police should have the means of communicating with all the wards of London, and thus becoming acquainted at once with all the haunts of thieves as much as possible?—Abstractedly, I should say it would be so.

1383. Do you not think it would be so practically also?—There can be no objection to it.

1384. Is it not most desirable?—There is no doubt it is desirable.

1385. Do you think your system ensures the obtaining of that general information of the state of crime which is desirable?—I should say, with reference to the city of London, certainly.

1386. Do you think the police force in your ward knows any thing of the state of crime in other parts of the city?—I should think it did.

1387. Will you state how they acquire that knowledge?—Because the beadles are in continual conversation with each other. The beadle of the ward is considered the superior officer of the watch, except the constable of the night, and they meet monthly, or more frequently, at Guildhall, producing all their books, and while in the office, any matters of burglary or robbery form the principal topic of their conversation and inquiries.

1388. Have they any means of communicating established systematically?—Not beyond their nightly watch meeting, or at the Guildhall monthly.

1389. Have they not a good deal to do when they go to Guildhall, with reference to their own peculiar and local duties?—Very little; I have seen them called in one after another, and asked if they had any thing to say, and it appeared they had not, and went out again.

1390. But do they, in fact, or not make that meeting useful to communicate to each other the state of crime in their respective wards?—I do not know enough of the subject to answer that question.

1391. With regard to tumults, do you think your police force enables you to meet occasions of public tumults with success?—Not so well as the Metropolitan Police; certainly not.

1392. The great object of a police force, of course, is to prevent crime?—Yes.

1393. The city of London maintains, at present, its own police, such as it is?—Yes.

1394. There is no organization or communication as between the wards themselves, is there?—I consider there is.

1395. Will you describe how one ward acts with another with reference to the pursuit of a thief?—I can only answer the question as far as it comes within my own knowledge, that whenever a thief has committed a robbery in my ward, the officer who has been endeavouring to take him into custody has pursued him until he has taken him, whether it has been the next ward or the ward adjoining.

1396. And you think it desirable that such a pursuit should be permitted throughout all the wards?—Certainly I do.

1397. Would it not also be desirable that there should be a still better organization and communication between the beadles of the respective wards of the city?—There can be no objection to that.

1398. If that be true as regards the city, would it not also be true with reference to other parts of London; should there not also, with reference to other parts of London, be both organization and communication with a view to check crime?—There is no doubt that is correct.

Mr. *Richard Hicks*

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1399. Is there any such organization and communication between the police outside the walls of the city and the police within the walls?—Not that I am aware of.

1400. Then, in your opinion, if there were a co-operation and uniformity of action between these two police forces, it would be an advantage?—It is possible it might.

1401. Have you ever turned your attention to the best mode of effecting that communication and co-operation?—No, I have not; for the last two or three years I have dropped all inquiry upon the subject.

1402. Mr. Alderman *Wood.*] You spoke of the beadles; do the beadles ever enter into the subject or co-operate in matters of police at all?—I think they do; the reports I have received from the beadle of my ward.

1403. You are speaking only of your own ward?—Yes; the beadle has brought me reports on the subject of night robberies and so on.

1404. *Chairman.*] You think the Metropolitan Police a great improvement over the old parochial watch?—Decidedly.

Mr. *Thomas Corney,* called in; and Examined.

Mr. *T. Corney.*

1405. Mr. Alderman *Wood.*] HOW many years have you been in the common council?—About eight or nine.

1406. And most of the time deputy of the ward?—Within about a year or 18 months.

1407. Have you taken some pains on the subject of the mode of watching the ward of Broad-street?—Yes.

1408. And you have expressed yourself in common council very much against the amalgamation of the day and night police as one body?—Yes; upon the provisions of the Bill which was about to be passed through the House of Commons.

1409. Against the Bill which did pass?—Yes.

1410. And you objected strongly and opposed in your place the passing of that Bill originally before it came out of the corporation?—I opposed it unless a clause were withdrawn, which we thought, under the advice of the council, put the whole force under the aldermen, and not under the committee, although the committee were nominally the managers; Sir John Campbell's opinion was, that *de facto* they were only under the aldermen.

1411. Now will you state to the Committee your own objections, coupled with that of the inhabitants of your ward?—The inhabitants of the ward met in ward-mote, and came to a series of resolutions, all tending to require that no alteration should be made which took the management out of the hands of the local authorities by whom they had been served satisfactorily for a series of years; a petition to the court of common council was drawn up in those terms, and the representatives of the ward were instructed to support the prayer of it. The nightly watch system has been assisted throughout the city, by reference to the few depredations that have been committed in it, in comparison with those of other districts, and where another system is adopted. The considerations in the city of London are different from those in the metropolitan districts; the inhabitants of London look to the watch more particularly for protection of their houses, and for giving alarm in case of fire, which does not form a very strong ingredient in the metropolitan districts; and, therefore, they require a larger number of men should be supplied on the surface than in those districts; they require, also, that in the event of any complaint having to be made, they should have the means of making it promptly, and that redress should be afforded instanter, which the inhabitants consider would not be effected by any measure which would take the control out of the local authorities, over whom they hold a degree of control themselves by annual election. An objection has been raised to the watchmen of the different wards traversing the districts which connect the different wards too closely together, but the inhabitants feel that, inasmuch as it makes more men spread over the surface, they have additional protection by that means, and there is a surveillance of one ward over another, which is a great check upon each, and the additional force in those districts is not thrown away, or the expense unrequited; they have another feeling, and that is supported by the evidence of the chief inspector of police of the city of London (Marchant), that it requires a different class of men as nightly watchmen from that of the day police; the evidence is in print, and will be found in the Report

Mr. *T. Corney.*

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Report of May 1830, folio 19, 20, if the Committee wish to refer to it to elucidate its views; I agree with that feeling of Marchant, that a different class of men are required for the two bodies: the nightly watch are men above 40 years of age, generally speaking; they are not engaged if they are above 40, but continuing for a series of years, they range from 40 to 60; and I should say that, for the purposes of the nightly watch, I hold that they are more efficient and less liable to be tempted off their duty than young men, who are most fit for the day police; I have experience to justify me in stating that, inasmuch as acting as church-warden for St. Peter-le-Poer, Broad-street, a young woman who belonged to our parish claimed relief, being in the family way; upon being interrogated, she swore the child against a policeman of the metropolitan district; and it became a question how a man on duty could have been guilty of the act; and she went on to detail that she sent her sister to the end of the street to watch when the superintendent should come past, to give them notice, and, having noticed that the superintendent was on watch at the top of the street the policeman went out and was on his beat: that is not so likely to occur at a more advanced age, or with men with families, as young men who are generally the day police. One advantage of our system of the nightly watch is, that in the event of a fire, they can always call out the relief, which is a third of the number of our watchmen, from the watch-house, and effectuate the object without taking any of the men off their local beats, because the property concentrated in the houses in the city of London is so large, and so carelessly left by the inhabitants, on account of the good conduct of the present system of watching, that any thing which might take the men, either tumults or otherwise, off their beats, would make liable to plunder an immense quantity of property left in houses, in courts and alleys in the city, quite contra-distinguished from any part of the metropolitan district; the inhabitants likewise feel a great security to themselves by hearing the watchmen call the hour of night (so it is reported to me in our ward), and that letting out a great part of the lower premises or occupying them for business, they very generally live in the upper floors of the houses, and parties at all nervous are anxious to know that somebody is about the lower part of their house who would give them information in case an alarm of fire should arise; and I have been told by the inhabitants of the ward, that if they had not that protection which they at present have from the nightly watch, they should employ private watchmen of their own to effectuate the object; that is done already in the neighbourhood of London; in Spitalfields there are 18 private watchmen, and Hackney and Bethnal Green have private watchmen, not feeling that certain localities are properly protected by the general system of the Metropolitan Police.

1412. Mr. *Marshall.*] Are the 18 watchmen in Spitalfields required by the inhabitants generally, or one in one place and one in another?—I take it, they are employed individually; but it appeared in evidence before the committee of nightly watch at Guildhall (I think it was Marchant who stated it) another advantage derived from the nightly watch is, that from the constant habit of being located in particular districts, they know the habits of the inhabitants of those districts; many of the inhabitants intrust them with the key of perhaps a warehouse locked up, or in other ways; they have that confidence in them that they intrust them with the key; others, under the assurance that they are well protected, leave their premises under lock and key for the night, well satisfied that the watchmen of the neighbourhood know their habits so well, and know they are absent from their premises, and if they see a light in one of the upper windows they would immediately see that strangers were there, and it would produce an inquiry instanter, which a stranger in that location would pass by unnoticed: these are the suggestions thrown out to me by the inhabitants as their express dictates. There is an advantage, too, in the watchmen carrying a light, which I believe the police do not; one great part of the duty of the watchman in the early part of the evening is to examine the fastenings both of windows and doors of every house in his beat, and if he finds a door open, he has a right to go and make an examination whether any body is secreted, which he always does; this we feel to be a great advantage, and which I believe is not availed of by the Metropolitan Police; our habit is, if a watchman fails to communicate any place being unfastened, or fails to see it until the next man comes his beat, and he finds it out, the other is called to account for his neglect of ascertaining that which his successor finds out, and he is always suspended until he accounts for his conduct; therefore we keep up a very

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great attention to that which we hold would not be effectuated by parties who are unacquainted with the local habits of the neighbourhood, or if their number were not sufficient to cover a great deal of ground; it takes an immense sum, for it is not alone examining the fastenings of every house in the different beats, first starting particularly, but it is the duty of the watchmen at all hours of the night, and one of their chief duties.

1413. It appears, then, that the inhabitants of your ward like the present system of nightly watching, better than the metropolitan system of police, because, in fact, the nightly watch of the ward may be more properly called a system of private constables for people who leave houses very much unprotected at night, and generally without any one in them, than a system of police in a large town?—Yes, and my evidence went further than that; I said, in case of fires, those in the upper part of the house felt that they had some one in the lower part of the premises to warn them of any danger.

1414. The system of night-watch for each ward, which at present exists, must appear to you to be totally unfitted for any general system in a large city?—Certainly.

1415. Then the thieves of the metropolis can be but little known to the constables of each ward?—I should think not to the constables of each ward generally, but to the superintendents of the nightly watch, I take it, they are as well known as to any part of the police of the metropolis or of the city; our chief superintendent is particularly knowing in such matters.

1416. Mr. Alderman *Wood.*] You stated that the inhabitants of your ward wished to have immediate redress of any grievance which may arise, or any complaint they have to make; how often do you meet to redress those grievances at the common council?—If any application is made to me to-day, I order the watchman and the ward-beadle, with any evidence which may be necessary upon it, to meet me at 10 o'clock the following morning.

1417. Could not the same thing be adopted, if the deputy and common council were two of the committee of management under any Bill; would not the same thing apply, and would not they be ready to receive the same complaints of the inhabitants from any thing which occurred?—The Committee are aware the Bill which was brought in legally prevented the interference of any but aldermen with the men who were sworn in as constables.

1418. How many of your watchmen who were appointed by you are inhabitants of your ward?—I should think hardly one; I do not think there is one of the ordinary watchmen; the superintendents, as constables, we compel to be.

1419. Then what disadvantage would there be in the appointment of these men in the character of policemen from the inhabitants knowing them just as well as they know the men who are put on now?—Because in most systems of police they adopt a system of change to prevent men being too local in one beat, and thereby getting familiar with servants; and that change, it has always been feared, if introduced into the city, would have the effect I have complained of, not making them sufficiently knowing in the localities; in point of expense, I have made calculations, and I find under our system we can give more men for less money than under the metropolitan system, or the one proposed, for this reason among others, that we never pay more than for actual work; we have no invalids upon our list, because they are not paid if substitutes are provided for them; we pay the substitutes and not them, in the event of disability.

1420. Are not your expenses very much enhanced by the number of persons who are paid out of the watch fund, such as the ward clerks and other incidental expenses, which makes it still come to a larger sum?—The ward expenses are enhanced by those extra charges; for want of another fund, they are charged upon the watch rate fund; but as those expenses do not originate out of the nightly watch system, they would be expenses whether that was continued or not, and another fund must be created to defray it out of.

1421. Then, there is one expense that is considerably more, and that is, keeping up so many watch-houses; there must be an addition from the expense of the watch-house rent, coals, and so on?—I take it there must be some expenses in detail which might be saved; no question about it.

1422. Mr. *Marshall.*] Your ward of Broad-street is one of the central wards of the city?—It may be called central, but it is bounded by those which are extremes.

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1423. There have been difficulties found by the Metropolitan Police in following thieves into the outward wards of the city, which immediately adjoin the metropolitan districts?—Yes.

1424. And those difficulties would not apply to Broad-street Ward?—They may do so; it is not so distant from the extremes but that they might apply; within a quarter of a mile you go out of the city.

1425. How do the inhabitants, either of your ward or of the city generally, answer the objection that has been made, as to the difficulty of tracing thieves, and of the Metropolitan Police following thieves into the city?—My feeling, and that of every one I have communicated with, is, that it should be desirable that there should be a uniformity of conduct in most matters; that there should be no barrier to restrict any policeman from the city or from the westward entering each other's districts, but that there should be, through Parliament, a provision that a constable should do his duty throughout the whole kingdom; that is the feeling I commonly hear, and one which, if adopted, would remedy the inconvenience complained of; that a constable should be a constable every where throughout the kingdom.

Mr. *William Taylor*, called in; and Examined.

Mr. *W. Taylor.*

1426. Mr. *Marshall.*] ARE you one of the clerks in the Police Office, Union Hall?—I am.

1427. How many clerks are there?—Two.

1428. At what hours do you attend?—At Union Hall the practice is to attend at 10 o'clock in the morning, and continue until the morning business is completed; and then again in the evening, from half-past six until the evening business is completed, which is generally about eight o'clock.

1429. Has there been any increase of business lately?—Within the last two or three years there has been a great increase of business. I have only been there a period of three years and a half, but I find, from examination of the books, that there has been such increase.

1430. Does that require a longer attendance?—Yes, a much greater attendance.

1431. What salaries have you?—The chief clerk has a salary of 220*l.* a year, with an increase of 10*l.*, the maximum being 400*l.* a year. The second clerk has a salary of 120*l.* with a rise of 5*l.* a year. The chief clerk at Union Hall has a salary of 250*l.* at this time; I have 135*l.*

1432. When were the salaries fixed?—They were fixed by the Secretary of State (Sir Robert Peel) in a letter dated 2d June 1825.

1433. What were they before?—I am not aware exactly what the sums were before; I believe they were under that; it was a rise at that time.

1434. Can two clerks do the business of the office?—We find it quite impossible, and are compelled to employ one of the most intelligent officers as an assistant.

1435. Is the duty of the first and second clerk the same?—It is to a certain extent the same; the responsibility perhaps of the chief clerk is greater than the second; he accounts to the receiver of police every quarter for all monies received both by himself and the second clerk during the quarter.

1436. Could you do his business if he were absent?—We have done it occasionally, and are compelled to do so frequently; we are called as witnesses at the courts of justice, the sessions and the Old Bailey.

1437. Could you do the business in the office when the first clerk is absent without assistance?—We often do it, but inefficiently; we are compelled to do so occasionally.

1438. What duties of the clerk can be done by one of the officers you say you get to assist you?—Merely filling up processes; that is all the duty he takes; making out warrants and summonses.

1439. Have you any time for vacation, or do you attend all the year round?—We do attend all the year round; I myself have had, I suppose, in three years and a half, 28 days' holidays; but it is found very inconvenient indeed; one clerk cannot get through the business.

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1440. Is there any necessity, do you think, for a third clerk?—I conceive so, and have been of that opinion ever since I have been in the office; I have always found it impossible to go through the duties as I conceive they should be.

1441. *Chairman.*] Apart from the advantage which would accrue to you and your fellow clerk, what is the public necessity for a third clerk?—To facilitate the proceedings, not to keep the public waiting so much as they are compelled to do at present.

1442. At present, with two clerks, are the public frequently kept waiting?—Yes.

1443. What is the nature of the cases which occasion the delay?—I think it generally arises from this, that one clerk attending upon the magistrate to take depositions, he cannot keep pace with the magistrate; he cannot keep fairly up with the magistrate, and consequently he is compelled to be taking depositions frequently after the magistrate has completed his examination, and therefore he may have two or three sets of witnesses around him when the magistrate is going on with another case of minor importance.

1444. Do you mean by having another clerk, that two clerks would be occupied in taking down depositions of two different sets of witnesses, that is to say, the examinations in different cases?—The clerk's duty does not merely consist in taking down depositions, but he has to prepare notices, receive monies, and pay them over to the parties who are entitled to them, and a variety of other business, so that one clerk cannot keep pace with the magistrate as he is adjudicating upon the business.

1445. Is that on account of the interruptions of the other business?—Yes.

1446. You have two clerks at the office now?—Yes.

1447. Cannot one clerk, devoting himself to the examination which may be going on, keep pace with the magistrate, he having his fellow clerk to attend to such general business as might otherwise interrupt him?—I conceive not.

1448. But as the case actually stands, only one clerk is taking down the examinations in one case at a time?—Yes.

1449. There is another clerk also attending to the general business of the office?—Yes.

1450. Now what interruption then is there to the business of the office from that state of things?—The interruption is, that the clerk not being able to keep pace with the magistrates, he frequently has two or three sets of witnesses in each case waiting for him to take down their evidence, after they have given it to the magistrates.

1451. It sometimes happens then, in the course of business, that before you have entirely concluded one case, you commence an examination into another case?—Exactly.

1452. In those cases you find the want of an additional assistant?—Yes, that is the time when we find the want most.

1453. According to the arrangement of the office now, not having finished one case entirely when another begins, and being still employed upon the first, you thus get into arrear in the next case?—Just so.

1454. And that must lead, I suppose, to much confusion in the office?—Very great confusion indeed.

1455. And the witnesses are often detained longer than they otherwise would be?—Yes, sometimes two or three sets of witnesses we get into arrear with.

1456. An additional clerk, then, would tend to relieve the office of much of that crowd, and the inconvenience of attending that crowd which now exists?—I conceive so, very frequently.

1457. With regard to vacation or holidays, how do you make arrangements for that?—We take very little indeed; and one clerk is compelled to do the duties which two or three are unable to get through.

1458. In that case, is the inconvenience proportionally greater?—I should say so; it must be.

1459. Did you know that to be so when you have been sole clerk?—When I have been left to manage the business myself, I have found great difficulty, indeed much more so than when I have had the business of my colleague.

1460. Have you any information with which you can furnish the Committee with reference to the locality of Union Hall, information which you have derived

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at all from those who have frequented it for the purpose of business?—It has been complained of by parties who appear to make applications for processes. I believe they complain principally of the distance they have to come to get the assistance of a magistrate, the police office being situate on the border of the district, which is very large; it takes in several very populous parishes.

1461. It is upon the eastern border of the district?—Quite so.

1462. You have found the inhabitants complain frequently of that circumstance?—I have.

1463. Have you ever heard any complaint of the want of accommodation in the office with reference to its convenience and its space?—The accommodation that is wanted most in the office, I think, is for clerks; there is no private room for the clerks; the place for the clerk who is engaged in making up the books and hearing applications is merely in a slip partitioned off from the office, where the clerk is engaged in business after the magistrates have finished their labours for the day; it is only partitioned off from the office; there is no comfort at all.

1464. As regards the evening sittings, can you give the Committee any information as to the number of cases which come before the magistrates in the evening?—I have taken great pains to form some idea of the number of those cases. The average number of charges before the morning sitting and after the evening sitting, I think, amounts to about six; of those, I think, two might be cases of persons too drunk to be brought up till next day; three of those are felonies or misdemeanors which are not in a stage for examination at all, and are only in a stage for remanding for further examination; and common thieves and charges under the Vagrant Act, about one.

1465. To what time does that average extend?—Looking back to the last two or three years, and having conversations with parties belonging to the police—some of the inspectors that come to our office.

1466. Are there not cases equally unfit for examination which occur in the morning?—There are.

1467. How do you deal with them?—They are brought up directly; probably, I should say, such charges would be charges of drunkenness. I should think that was the only case in which the party could not be brought up till the morning; but that party might be bailed, supposing he was not sober after the evening sitting.

1468. Might there not be some just ground of complaint if parties were detained at the station-house for so long a period, say from five o'clock in the afternoon, supposing the office hours extended to five, until the next morning?—I should think that the extent of the objection would be very trifling; I conceive there could not be above one perhaps nightly.

1469. Do the monthly reports which you make to the Home Office occupy much time?—The monthly reports we make to the Home Office I should think altogether would average about three days of the office hours.

1470. Were you educated to the law?—No, I was not.

1471. Have you ever found any difficulty in discharging your duty from the want of legal knowledge?—I did at first.

1472. You have been obliged to apply yourself to legal studies to qualify yourself for the office?—I have.

1473. Do you know whether the magistrates deem it of any importance to select those who have legal qualifications in preference to those that have not?—I have heard the magistrates make such a remark.

1474. Do you believe that a clerk possessing legal information might be of great service to the magistrate, both with regard to the taking of depositions and giving answers to persons, which duty he might be unable to discharge?—I should think so; very great.

1475. Has the business of your office increased as compared with any former time?—It has, very greatly; I have an extract from the monthly reports which we make to the Home Office, from which it appears that in the month of May in the several years from 1825 (that was the period at which our salaries were fixed) up to 1837, the business has gradually increased; the increase was very fluctuating until 1835, when the cases in the month of May nearly doubled those of 1834, and the cases in May 1837 exactly doubled those in the last year.

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1476. Will you state the number of cases in each year?—They are as follows

Felonies and Sessions Misdemeanors.	Committed.	Discharged.	Cases.
May 1825 - - -	26	33	50
„ 1826 - - -	51	18	53
„ 1827 - - -	22	25	42
„ 1828 - - -	26	67	80
„ 1829 - - -	27	39	53
„ 1830 - - -	33	81	98
„ 1831 - - -	15	77	79
„ 1832 - - -	30	71	83
„ 1833 - - -	27	41	64
„ 1834 - - -	32	65	83
„ 1835 - - -	42	133	148
„ 1836 - - -	36	102	123
„ 1837 - - -	60	216	244

1825 is the year in which the salaries of the clerks were fixed, and the difference between that year and 1835 is 34, 188, 194.

Mr. *William Symons*, called in; and Examined.

Mr. *W. Symons.*

1477. YOU are chief clerk at the Thames Police Office?—I am.

1478. Have you been so for a considerable number of years?—Yes, for 27 years.

1479. What number of clerks have you there?—Only two.

1480. What are the hours of attendance?—From eleven in the morning to three generally, or unless business requires further attendance, and from half past six or seven to eight or nine in the evening, according to circumstances.

1481. Will you give the Committee as concisely as you can a description of your duties?—I should say the duty of the chief clerk is to take all examinations and depositions, to prepare summonses, warrants, convictions and judgments, as well as all other documents connected with the exercise of the magisterial functions, a certain degree of legal knowledge; a mind capable of applying, in nice distinctions, the law to particular cases; a judicious power of inquiring into facts without leading witnesses, and the arranging and condensing them without disturbing the order of truth, with a becoming share of personal respectability. These I would suggest as the proper qualifications of a police clerk. The magistrates are responsible for the validity of their warrants and judgments, and their responsibility may be seriously affected by the want of ability in the clerks, who should be men fit to be consulted, because, although magistrates are now selected from the bar, I, in the course of my long experience, have not found any magistrate disinclined occasionally to consult the clerk, especially in cases of summary jurisdiction, where a large discretionary power is to be exercised.

1482. You therefore are of opinion that there should be a certain amount of legal knowledge possessed by the clerks?—Certainly.

1483. And that in selecting clerks, perhaps magistrates should make that a *sine quâ non*?—I should say there are some clerks in the police now who have not had that previous preparation, who are very excellent clerks; but then it requires a great deal of labour in the first instance, and they have to acquire that knowledge under very difficult circumstances.

1484. And in the mean time the public may occasionally suffer?—Yes, certainly; and the other clerk does suffer very materially.

1485. Now, will you, with reference to the former question, describe as nearly as you can the duties of the clerk; describe to the Committee what is required of the clerk in the discharge of his daily duty?—At the Thames Police Office the Committee are aware that the summary jurisdiction is exercised more largely perhaps than at any other office. In all those cases it is very important that a full note should be taken of the evidence; it requires the full and constant and undivided attention of the clerk to take a note of every thing which occurs; to take the evidence in all those cases of summary jurisdiction. There are a great variety of matters arising out of the other business of the office which must be attended to by the other clerk, such as applications for summonses and warrants, applications

tions for informations, and a variety of things which it is scarcely possible to describe.

1486. Persons frequently apply, I suppose, to know whether certain cases fall within the jurisdiction of the magistrates?—In those cases the parties generally apply to the magistrates at the Thames Police Office; of course, where there are several cases of felony, the depositions cannot be taken in detail before the magistrates; if there be a great quantity of other business in the office, it would be impossible to do it; and therefore, one clerk is occupied in another room taking down those depositions in detail, after they have been heard in point of fact by the magistrate in the presence of the prisoners; they are then brought in again, and those depositions are read over to them, and signed.

1487. Will you state the salaries of the clerks at your office?—My salary is 476*l.* including some extra allowances; I am in a more favourable position than some of my brother clerks; the salary of the junior is at present 135*l.*; he commenced at 120*l.* a few years ago, and he received an addition of 5*l.* a year.

1488. Why are you more favoured than others?—I received an addition of 50*l.* to my income in 1816.

1489. On what ground was that additional sum granted to you?—I received that additional 50*l.* a year in consequence of a strong recommendation of the magistrates, and the receivers in 1816 stating that I had caused an increased sum to be returned in the amount of the fines, penalties and forfeitures; and upon the establishment of the River Police above bridge, an addition of 26*l.* a year was given to each of us in consequence of the extra trouble arising out of that service. Those allowances have been under the consideration of the Secretary of State since that time, and an official communication has been sent to the magistrates, that they are to be continued to me, but to cease when the appointment shall become vacant.

1490. Has there been any increase at your office?—Certainly; the monthly returns of last year showed a considerable increase in the number of offences, as compared with the previous year.

1491. Are two clerks sufficient for your office?—I am not prepared to say that two clerks are insufficient for our office; but at the same time, if there be two clerks only, it will not allow each clerk much time for relaxation. I have not been absent from the office in the whole 27 years more than four months, I may say six months, certainly.

1492. Has it come within your knowledge, that complaints have been made of the want of some assistance of that kind?—No, I should say not at the Thames Police Office.

1493. Are you in the same room with the magistrates?—Yes.

1494. Have you any room for taking depositions and examinations while a case is going on?—We have a small room; but it is so small as not to be capable of containing more than three or four persons, without great inconvenience; as far as my own personal feelings go, I should wish to have a room in which the prisoner should be present while the clerks are taking down the depositions in detail.

1495. Does not the prisoner hear the depositions which are given subsequently before the clerk?—No, he is not present at the Thames Police Office, for want of that accommodation.

1496. Are they read over to him?—Yes; he hears them stated before the magistrate, and they are read over after they have been taken in detail by the clerk, in the presence of the magistrate and of the prisoner.

1497. Are you able to give the Committee any information as to the number of cases upon an average occurring in the evening for the last 12 months or the last six months?—No; I have not turned my attention to that subject; I should think three or four, perhaps, upon an average.

1498. Not more?—No.

1499. Do you think the public would be subject to any inconvenience or any hardship in the result, if the evening sittings were abolished, and the hours of the office extended to five o'clock?—I should think not; there being a power at the station-house to take bail in all cases of misdemeanor.

1500. Have you ever in the course of your long service considered whether additional powers to magistrates could be usefully given with reference to the repression of crime, and the punishment of juvenile offenders?—I have long felt

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that some system was absolutely necessary to be adopted with reference to juvenile offenders in such a metropolis as this, where there is, and perhaps always will be, a great number of children who are left to the streets as a school, if I may use the expression, and to themselves for their chief means of subsistence.

1501. When you spoke of additional powers, do you mean of a summary description?—Yes.

1502. You are aware that such a power involves the abolition of trial by jury in such cases of summary jurisdiction?—I am aware of that.

1503. From the experience you have had, do you think, in the case of juvenile offenders for petty crimes, the public would object, or feel that they had lost a protection by the abolition of trial by jury in such cases?—I should think not; if such powers were properly guarded, and extended only to trifling cases; perhaps there might be a question as to the propriety of giving such a power in cases where matters of fact are of a very doubtful nature, and such as ought to be left to a jury; but there are a great variety of these cases where there can be no question whatever as to the matter of fact, and where the case may be just as properly disposed of by one man as by twelve, especially bearing in mind that the magistrate who has to decide in these cases is a barrister, and therefore capable of forming an opinion upon the matter of law.

1504. You say in the Thames Police Office there is a much larger summary jurisdiction than in any other office?—Yes.

1505. Have you ever found that complained of on the part of the public?—Not in the slightest degree; but quite the contrary, because all persons who have property upon the river know perfectly well that summary jurisdiction is the only mode by which plunder upon the river can be effectually prevented.

1506. Have you ever known the prisoner object to it?—I have not known them openly objected to; but I dare say they have not taken their imprisonment or their fines very quietly, but they have not gone the length of objecting to the jurisdiction. I believe the Thames Police Office was established in 1800, and the system, when it was at first carried out into operation, met with great opposition, so much so that I believe there were violent assemblies who attacked the office.

1507. What class of persons objected?—The coal-heavers and lumpers, and other large bodies of persons of that description, whose profits were likely to be very much curtailed by it.

1508. Suppose the summary jurisdiction were limited in this way, that all cases of simple larceny, without reference to age or to value, were subject to a summary jurisdiction; and in all cases in which there was any difficulty as to matter of fact, or as to points of law, the magistrate had at his discretion the power of referring them to the sessions, just as he now refers assault cases; what would be your opinion of such a state of the law?—I think it would be beneficial.

1509. Do you think, from your experience, there would be any well-founded objections on the part of the public to such an extension of the summary jurisdiction of the magistrates?—It is difficult to answer that question; it must depend so very much upon the manner in which it is to be tried and carried out. The public are very jealous of all interference with the trial by jury, and any interference of that sort must be done certainly with great delicacy and great forbearance, and it must be administered very cautiously and temperately.

1510. But if magistrates were always men of some standing at the bar, and if the proceedings were conducted more analogously to the courts above, do you think that would tend to diminish the objection and increase the confidence of the public in his decisions?—Undoubtedly; any thing that would have a tendency to raise the moral influence of the police office, which ought to pervade them as much as possible, any thing that would do that, would have a tendency to give the public an increased confidence in the decisions which took place there.

1511. Would it not tend also to reconcile the public to this summary jurisdiction were the magistrates empowered to inflict a limited period of imprisonment less than that which the law now awards, as a punishment for the same crime, when punished at the sessions?—I should think it would; and with regard to juvenile offenders, I would submit that any system of punishment that would comprehend correction, instruction and employment, would be beneficial, in whosesoever power it might be to inflict it.

1512. Supposing

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1512. Supposing the magistrates exercising summary jurisdiction could only inflict a limited period of imprisonment, whereas the law, with reference to the same crime, simple larceny, should remain the same as it now is, if administered by the magistrates in quarter sessions or by the judges; do you think in that case the prisoner, if he had the option of availing himself of the trial by jury, would or not be disposed generally to take that option?—Perhaps not in cases where the facts are clear and undisputed; but if the facts be not clear, I am inclined to say he would rather take his chance in going before a jury.

1513. In point of fact, it would depend upon his own estimation of his probability of conviction?—Yes.

1514. If that were so, would there not be a great majority of cases instantly disposed of by the magistrates in the first instance?—I should think there would be a great many cases disposed of by the magistrates in the first instance, certainly.

1515. Is it to be taken from your answer that in the great majority of cases you are of opinion that the facts are exceedingly simple and clear?—Yes, certainly.

1516. And the first judgment is confirmed by the subsequent conviction?—Yes.

1517. Have you any thing to suggest with regard to improving the clerks of the police offices, either as to qualification, or to the better apportionment of their emoluments?—With regard to qualification, I have gone somewhat at length upon the subject; I have alluded to moral influence; I think that the clerks or other persons ought not to be without it; they are connected immediately with the administration of justice; their duties make them well known to the public and to the police, and I think if they had a suitable degree of moral influence they may very much assist the magistrates in the performance of their functions. With reference to their salaries, that is rather a delicate question for me to touch upon; but, as I have already stated, I am in a better position than my brother clerks; but, perhaps, I can enter into that question with less difficulty than they could. I certainly do not feel myself at liberty to take any step, nor to entertain any expectations with regard to my own situation or prospects; I am content; I have worked hard for the public up to my present period of life. My children are growing up, and I feel myself in such a situation as to be content. But, perhaps, I ought not, as a fair opportunity is now afforded me in the course of this inquiry, to shrink from suggesting with great deference on behalf of those who have been less fortunate, that the present scale is scarcely sufficient to ensure their comfortable subsistence, to enable them to make a trifling provision for their families, or to keep them in a becoming position which is submitted to be necessary. If the second clerk should not obtain promotion until he has progressed to the maximum of his class, it would take him 38 years to get up to the income of 380*l.*, that is supposing he obtained promotion at the end of 20 years' service; in that period a man has to struggle against the pressure of his children's education and entrance into life, yet the low advance of the present classification leaves him without the means of bearing such pressure in a suitable manner, and, if I may be allowed to instance a case of one of the clerks who was second clerk at the Thames Police Office, from the beginning of the year 1809 to August 1832, I beg to state that he is now the chief clerk at one of the offices, and although he has been clerk nearly 24 years, his income is only 260 *l.*; I am sure his case is felt to be a hard one, and that if any relaxation of the rule in favour of deserving chief clerks who, by any untoward event, shall serve so long a period as he has without promotion; if any such relaxation could be properly admitted, I am sure there is a disposition to deal favourably with such cases; and in availing myself of this opportunity of drawing attention to them in that quarter where they may meet with consideration, I hope I shall be pardoned; I owe it in justice to the person to whom I allude to state his name—Mr. Fell, the chief clerk of Mary-le-bone office; from a long and intimate acquaintance with him, I can state him to be a man of high integrity, of great moral worth, and one of the most efficient clerks in the police.

Jovis, 15° *die Junii*, 1837.

MEMBERS PRESENT:

Lord Hotham.	Mr. Marshall.
Mr. Estcourt.	Mr. Clay.

MR. HAWES, IN THE CHAIR.

Mr. *Francis Hobler*, called in; and Examined.

Mr. *Francis Hobler.*

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1518. *Chairman.*] YOU are a solicitor?—Yes.

1519. You are professional adviser, I think, to the Licensed Victuallers' Protection Society?—Yes.

1520. Of what number of licensed victuallers does that society consist?—I think about 2,000, or between 2,000 and 3,000 altogether.

1521. They may be fairly considered to represent the interests of the trade?—I think they may.

1522. Has there not been a general want on the part of that trade of the assistance of the police in cases of apprehended assault?—Yes; very much so.

1523. Will you describe the nature of it to the Committee?—It is a very frequent thing, when publicans are about to close their houses at night, to have persons insist on being further supplied with liquors, or fresh persons coming in and insisting on being served; and in either case, if the landlord refuses, it is very often the means of words arising between the parties, one wishing to get his house clear, and the other refusing to go out until they have had liquor; and the landlord is prevented having the assistance of the police officers to clear his house, because the Commissioners of the Metropolitan Police have told their men not to enter public-houses unless they hear the word "murder" cried out; and, therefore, if a landlord wishes to clear his house, it is ten chances to one, but that he gets into a disturbance with his customers, and fights and brawls ensue between the parties, and they are either taken into custody and are brought before the magistrates, or, as is frequently the case now, actions are brought against the landlord by those men who would thrust themselves into his house against his will, and insist on being supplied with liquor.

1524. They are obliged to shut up their houses at fixed times, by law?—There is no fixed time by law at which they are obliged to shut up their houses, except on Sundays.

1525. On Sundays they are also obliged to close at fixed hours?—Yes; during the hours of divine service.

1526. At night, I believe, the general rule is to close at 12 o'clock?—It is usually understood that they should close at 12 o'clock. The magistrates consider it to be so under the words of the Act of Parliament, and also under the license, which states that the party is "to keep good rule and order" in his house.

1527. Are they not very frequently subjected to the inconveniences which you have described in their desire to obey the law?—Yes, very frequently.

1528. I believe you have some remedy to suggest for that, have you not, and which remedy has the general concurrence of the society of which you are the professional adviser?—Yes.

1529. Will you describe it?—The remedy I would suggest is, that the publican, the master of the house, or, if he should be absent, his wife, or the person who attends his business for him, should have the power to call in the police officers to clear the house, the time having arrived at which it is understood he is to shut up; and that he should also have the power to call in the police to clear the house if there is any disturbance made by persons who are visitors or customers there, and who desire to be served against the master's inclination to serve them.

1530. Have

1530. Have you not some clause which you have prepared for that purpose?—Yes, I have prepared two clauses.

1531. Did not the clause which was proposed in a Bill which was presented to the House of Commons in the last Session of Parliament, intituled, "A Bill for the better regulation of Inns, Ale-houses and Drinking-houses," meet the case in question?—That clause, I think, would be a very sufficient clause to meet the object I have mentioned.

1532. Lord *Hotham.*] Are you aware of the reason why the Metropolitan Police are not allowed to go into public-houses unless the cry of "murder" is heard?—I am not aware why the Commissioners have prohibited it, unless it is to prevent the men having access to the public-houses under pretence of there being a disturbance or affray in the house, and being supplied with liquor, which is a prudential motive on the part of the Commissioners; but it also gives rise to great inconvenience to the publicans. I have had occasion, lately, at Mary-le-bone-street and the other offices, to defend informations preferred by the police against publicans, for having disturbances in their houses; and I have proved, by witnesses who were in the houses complained of, that the affray which the police summoned the landlord for suffering in his house, was occasioned by persons sometimes forcing themselves in, and even forcibly holding the door to prevent the landlord putting them out again, and insisting upon liquor, which he has refused to supply them with, and a regular brawl has ensued, and frequently a fight, and some of the parties have been knocked down and violently ill used before the landlord could get them out of the house; which at last he has succeeded in doing, the man perhaps being a perfect stranger to him. He is summoned before the magistrates by the policeman who is standing opposite his door, and sees the parties coming out, and will not interfere. The landlord is summoned by the police officer for suffering that disturbance in his house; and when I have shown, by witnesses, that was the case, the magistrates have dismissed the informations. Constantly the police are called upon to know why they have not interfered; and they have stated their instructions to be, that they are not to interfere unless they hear the word "murder" cried out. I have those summonses frequently to attend; I have also to defend actions in courts of law brought against publicans who have done the same thing, and the parties have afterwards found an attorney who would take up the case, and bring an action of assault or false imprisonment against them. A party paid me nearly 100 *l.* for the expenses of defending two actions of that kind the other day; and the case on the part of the plaintiff was supported by very gross perjury committed by a witness; it was represented to the Protection Society that such was the case, and they directed me to prefer an indictment for perjury against the party, which was done; but when we came to search for him, not a single tittle of the address which he had given where he was likely to be found, or where he said he had worked, was true; nor could we get any information from it; it was perfectly untrue; the case was supported entirely by perjury, and the indictment now remains against that party.

1553. *Chairman.*] I understand you to say that the provision of the Bill referred to would be a great benefit to the trade, and would tend very much to promote the public peace and the public morals?—I think it would very much; it would enable the landlord of a public-house to conduct his business in a regular and proper way, by enabling him to have the assistance of the police to clear the house, which he is at present deprived of, owing to that regulation of the Commissioners.

1534. Will you have the goodness to hand in a copy of the clauses you proposed?—Yes, I have brought them with me.—[*The same were delivered in.*]

1535. With reference to cases of coining, can you suggest to the Committee any remedy against offenders of that description?—Yes; as the law now stands, a person who is in the habit of passing bad money cannot be sent to trial for that offence, unless there are two cases arising against the same individual within 14 days of each other; now magistrates, who are constant and regular in their attendance at police offices, become accustomed to the faces of persons who are frequently in the habit of being brought before them for such offences; they know them, of their own knowledge, as having been at their office perhaps several times before for passing bad money; but when they are so brought up, there may not have been two cases within the 14 days; and unless there is some act accompanying their conduct which is deposed to by the witnesses, from which the magistrate can deal with them under the Vagrant Act, the offender escapes. What seems to me the

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mode of meeting that difficulty, is by allowing the magistrates, where it is proved to their satisfaction that such a person is an old offender in passing bad money, to deal with him under the Vagrant Act, by sending him to prison for any time not exceeding three months, to be kept to hard labour.

1536. Would it not be preferable to deal with such cases under special enactment, rather than under the Vagrant Act?—Yes, but there is no enactment at present to meet that difficulty.

1537. But it would be preferable, would it not, to have a special provision for such cases, rather than treating them under the Vagrant Act?—Yes, I only suggested that as one remedy for the defect; this seemed to be an opportunity of naming the subject.

Mr. *Henry White Vousley*, called in; and Examined.

Mr. *Henry W. Vousley.*

1538. *Chairman.*] ARE you chairman of the Licensed Victuallers' Protection Society?—I am.

1539. You heard the evidence given by Mr. Hobler just now?—I did.

1540. Do you concur in that?—I do.

1541. Is there any thing you wish to add to it?—I wish to add a word or two upon the same subject. I live in a working neighbourhood, Bermondsey, in which there are many who are noted brawlers, whose presence is considered a signal for a disturbance in any room where they are; our present position is this; a man of that sort comes into my tap-room; he is boasting of his prowess, of how many men he has beaten, telling those who are present they are not such good men as he is; I see that it will lead to a disturbance of the peace, or he, perhaps, may strike some one, and a disturbance may take place; I cannot have the assistance of the police; if I go to the door and see a policeman, I tell him I have a character of such and such a description in my house, and that I have reason to apprehend a disturbance; in fact, I am sure, from the character of the man, that something of the sort will take place; his answer is, "Put him out, and I will take him away." I have sometimes been so situated, that there have been three or four characters of that description together; and where one has insulted me, and insulted my other guests, who were disposed to be quiet, and one of his companions, in a jeering taunting tone, has asked me, why I did not send for the police to put him out, and then set up a horse-laugh, and another has replied, "Because he cannot;" the fact being known to those improper persons that we cannot have the assistance of the police, gives them a sort of impunity in our houses, which they do not possess in the public highway. My belief, from my practical knowledge upon the subject, is, that the mere knowledge on their part that we could have the assistance of the police, if it were requisite, to suppress their disturbances, would, in the majority of instances, supersede the necessity for using it at all; I think they would regulate their conduct so differently, knowing we could have assistance, that I should say there would be no fear of that power being used improperly by a licensed victualler, inasmuch as his interest as well as his inclination would lead him generally to appear as little as possible at the police offices to prefer charges of disorder against his guests; he would have an inclination to appear as little as he was compelled to do, and he would apply to that as a last resource after persuasion had failed; as the law now stands, we are enjoined, by the tenor of our license, to maintain good rule and order in our houses, and yet we are not supplied by law with the means of doing it.

1542. Lord *Hotham.*] Are you aware what are the sentiments of the Metropolitan Police Commissioners upon the subject of giving you the power of calling in the police in the manner and under the circumstances you describe?—I understand, from a conversation I had with the Commissioners, that they are favourable to such a power being given; in addition to which, a clause to that effect passed the House of Commons last session.

The Rev. *John Ousby*, called in; and Examined.

Rev. *John Ousby.*

1543. *Chairman.*] ARE you the chaplain of the House of Correction at Coldbath-fields?—I am.

1544. How many years have you been chaplain there?—Thirteen years and a half; I was appointed in January 1824.

1545. Are there a great number of juvenile offenders committed to that prison?—A great many.

1546. You

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1546. You come a good deal in contact with them, do you not, in the discharge of your duty?—Yes, I have a great deal to do with them. We have a catechist to instruct them, 50 or 60 of them; to catechise them before the congregation; to enter most minutely in that catechism into the various parts of Christian doctrine, and instruct them in such a way that they shall understand every thing they read or hear; to understand terms principally at first, and then lead them on to a knowledge of things, so that when they come to be examined afterwards, they generally have a tolerable knowledge of Christianity, and become very expert in answering such questions.

1547. Have you turned your attention at all to the causes of crime among that class of offenders?—The causes are various; I should conceive the close inspection of the police, and the summary jurisdiction of magistrates with respect to juvenile offenders, causes them to increase very much. When a boy is once taken into custody, though he is innocent, he loses his character, and it is with the greatest difficulty possible he can ever come into society again; he then falls into crime as a matter of necessity; he becomes a continual criminal, and we do not lose sight of him until he either dies or commits some crime that will subject him to transportation; sometimes we have persons of that description 11 months out of the 12 for years together, which has been the case ever since I have been in the house of correction.

1548. You say you think the conviction of juvenile offenders by summary jurisdiction is one cause of the increase of crime?—I think it is one cause of the increase of juvenile offenders; and among vagrants also it increases much.

1549. In what way does that operate to increase crime?—It places the parties who are first committed into such a position, by having been in prison, that their characters are lost in the estimation of society; they cannot obtain employment afterwards.

1550. Does that arise from the power which the magistrate has to try such offenders, or does it arise from the state of discipline generally in our prisons?—I should state, that our own prison, as a prison of discipline, is in such a state that there is nothing in the system to cause any thing of that kind, but every thing to the contrary; every prisoner desirous of being reformed from crime has all the means afforded which we can devise for assisting him.

1551. In what way would the removal of that power from the magistrates tend to diminish crime, in your opinion?—I think if those persons were not summarily sent to prison, but were sent to be tried before a jury, that many of them would not be convicted; that many of them who are now sent would not be sent to prison.

1552. Where would you confine these offenders previous to their trial?—They should go to prison in the ordinary way in which other prisoners are now committed for trial.

1553. Would not that be as fatal to their characters, and to the increase of crime in the way you suppose it is increased, equally with the system you at present object to?—I think perhaps not more than half the number would be committed at all; for the jury who would try them would consider the offence for which they were sent to trial so trivial, that it would not be done.

1554. Must they not be committed in the first instance for that trivial offence?—If the magistrate had the power to commit them he would do so.

1555. Would not that amount to nearly the same thing as at once convicting them by summary process?—No; they might escape when they came before the jury after being committed in the other way.

1556. Would they not previously be committed to prison?—They must be committed for trial, but the bill might be ignored; or perhaps they would be acquitted by the jury at the time of trial.

1557. But do you not think their characters would be equally injured, and equal difficulty would arise in finding them employment?—I think not, because they would then come out of prison as persons who had been tried unjustly; such kind of evidence as they are convicted upon at present would not convict them, and therefore they would be considered innocent.

1558. Do you not think that demoralization in the gaol might take place as much before trial as after?—Perhaps more so; because those prisoners who are under conviction are considerably better taken care of than those previous to trial. There cannot be the same regulations in receiving-gaols as there are in houses of correction.

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1559. That being the case, and the number of offenders being the same, why should it diminish crime by withdrawing the power now exercised to a certain extent by the magistrates, summarily to try offenders for certain crimes?—I think it would be the same thing as it is at present.

1560. Then the increase of crime cannot be accounted for altogether by the summary jurisdiction over juvenile offenders, as you previously intimated?—When I look at the increase of crime, and examine the various cases and consequences of it, I find that, in the case of juvenile offenders especially, there is a vast difficulty in getting any thing done with them, and they increase very much in number. We had altogether between 3,000 and 4,000 committals annually when I first went to the house of correction; but there were 13,000 afterwards, and they are increasing every year. I have got a return which will show the number annually, from 1823 to 1836, from which it appears that the committals from September 29, 1823, to September 24, 1824, were 3,821; and from September 29, 1835, to September 24, 1836, they were 7,931.

1561. The account you have just put in has appeared, I believe, in the Report of the Inspectors of Prisons?—I delivered it to the Inspectors when they visited our prison.

1562. You stated, in the outset, that among other causes of the increase of crime the close inspection of police forms one; will you state in what way that operates to increase crime?—I think the police very often take persons into custody who are innocent. They are looking out for those they know are criminals, and if they find them in company with others, they take both parties into custody, or as many as may be in company together.

1563. What would you suggest as regards the necessary police superintendence over a metropolis like this, so as at once to check crime, without at any time injuring the innocent?—I think the innocent would escape before the magistrate if he were taken there; because, in examining him, he would be found not to have the same characteristics of crime about him that the criminal had, and therefore he would be remanded, perhaps, or his friends would be sent for; but now it is so prompt, that they are seized at the same time and are both convicted, one being innocent, another being a well-known bad character.

1564. But they are only committed by the magistrate?—They are committed by the magistrate to the house of correction.

1565. What do you mean by saying they would sometimes escape, if taken before the magistrate?—Sometimes the magistrate would not send them to trial.

1566. What would he do with them then?—He would deliver them to their parents, I think, if there were no express clause in the Act of Parliament which required him to convict.

1567. Suppose they had actually committed a crime, would you not call upon the magistrate to award a certain punishment for it?—I should say, send them before a jury to be tried.

1568. And send them to prison in the first instance for safe custody?—Yes, they must be kept there till the time of trial.

1569. Subject to all the moral contamination which exists in that prison?—Yes; but I think that will be very different compared with what takes place now.

1570. What would be the difference between young offenders being committed always to take their trial and before conviction suffering certain periods of imprisonment, and a summary conviction?—I think half of them would not be convicted at all, if they were sent before a jury.

1571. But you omit to consider that they would be imprisoned before that trial took place?—Yes, I am aware of that.

1572. In the cases you suppose of young offenders, would they not be committed for trial, if not convicted by the summary power of the magistrate?—Yes.

1573. Now, will you explain to the Committee why there should be a great increase of crime in the one case and not in the other?—I can say nothing further than that my opinion is, that were the whole tried, they would not be found guilty; some would be dismissed, and consequently they would not be taken up by the police a second time. They would be acquitted by a jury, and then they are not considered as thieves.

1574. Do you think that the police are disposed to take up, and magistrates to commit, young persons who are innocent of the crimes with which they are charged?—

charged?—I believe a great many of them are innocent; I have got some cases here which will enable the Committee to judge. The first is the case of a boy named William Cross, who was in the house of correction, and who was sent by me to the Refuge for the Destitute, with this statement of his case: "William Cross says he has no idea how old he is; he believes he was born at Hertford, and brought up at Hoddesdon, near that place, by his maternal uncle, who took care of him, as he has been told, when his mother, of whom he had no recollection, died; his father, who was a blacksmith, died in London, where his uncle also lived about two years ago; he has worked in saw-mills, &c., and brought what he earned to his aunt, and when he was out of work he thought it better to pick up bones and rags than to do nothing. In this occupation the police took him into custody, thence to the station-house, and afterwards to the magistrate for trespassing in a field where some loads of rubbish had been shot about three months ago. He was committed to this prison for two months, and his imprisonment, the first imprisonment, terminated 20th April last. On repairing to the house of his uncle, he found that he was dead, and that his aunt, with her seven children, had been removed to her parish at Hoddesdon. He went thither, and finding nothing to do, and no countenance given to him, he measured back his steps to London, to the house of the father of Thomas Smith, who was in company with him when taken, and committed to this prison for the same period. What he knows of reading and writing he learned during the two months of his imprisonment here. Thomas Smith and he applied to me yesterday to be sent to you to-day." I received this answer upon the envelope from the secretary of the society: "If this statement be correct, William Cross is only destitute, and an object for parochial assistance, not for this institution."

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1575. In that statement you say the boy was taken up for trespassing in a field?—Yes.

1576. He was quite destitute?—He was earning his living by gathering bones and rags.

1577. Do you not think that mode of life was likely to lead to a good deal of immorality?—I should not, from the appearance of the boy, from his conduct altogether and his feelings; his high tone of good feeling, and his previous good conduct.

1578. But, looking to his future life, do you think there was much chance of improvement for a boy who depended upon so precarious a mode of subsistence as that?—I think he might have got an errand boy's place at four or five shillings a week; I think I could have got him that in a short time.

1579. Acquiring such vagrant habits and associating with the class he must have associated with in picking up bones and rags in the streets?—Yes; I think so.

1580. Now, will you take another case?—

"Thomas Smith says he is 17 years of age, and that his father is a journeyman baker, that he was imprisoned with William Cross two months also, having been in company with him gathering bones, rags, &c., in Islington, and that they were imprisoned for trespassing. He had never been in prison before."

Extract from the books:—"Time expired, 20 April, of William Cross, John White and Thomas Smith, all rogues and vagabonds, suspected.

The answer was, "Not a subject for that institution." The next is,—

"Alexander Ridge says he will be 16 years old the 15th November next, and that he can read and read writing, but cannot yet write; his father and mother are alive; his father, who can do little if he had it to do, through infirmity, has earned little or nothing the last two or three years; his mother sells religious tracts and sometimes magazines and books, and sometimes she begs; she is a native of Ireland, and his father, he believes, is a Spaniard; this lad's first imprisonment of two months terminated the 27th of April 1836, for sleeping out; the case was this: he was induced to go to the play, and afterwards to Osborne's for a morning ride; he then sat down on a doorway and fell asleep, and was taken by a policeman about six o'clock in the morning; he was taken into custody again at the fire in Store-street, Tottenham-court-road, in November last; he believes on the 8th of that month; having raised up some boards he was pushed by the crowd, and made to dash them

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against a window, whereby some glass was broken; being fined and not able to pay, he was committed six weeks to this prison; his present imprisonment was three lunar months, in the following manner: he was remanded one week for re-examination, and then 11 weeks when committed to this prison; the case was this: a bundle had been stolen in London, consisting of a gown and handkerchief, on the 27th of February last, at which time he was at Redburn, in Hertfordshire, in the pay of a man selling sprats; on the 9th of March, when he came to London, suspicion fell on him as the thief; but the child from whom the bundle had been stolen could not and did not swear to him, so that he was remanded for a week to the new prison, Clerkenwell, from whence, when brought up again, many boys followed the two police constables and the gaoler, throwing stones; one of the police had his head cut open and an eye knocked out; four of the boys were taken into custody, three of whom were sent to this house of correction for three months each, and the other one to the new prison for bail; the bearer was sent to prison also, not for the theft, but because his being carried through the streets handcuffed gave occasion to the mischief, namely, the other boys wounding the head and face of the constable; he has however lost his character, no one will now employ him, and he begs to be sent to the Refuge for the Destitute, that he may be able to earn his bread in future; he has been urgent with me many weeks for a letter."

I may add, that I sent William Cross to Hoddesdon, and begged the authorities of that parish to take care of him; I have not seen or heard of him since.

1581. Suppose the case of a boy who has actually stolen something, and suppose him to have been taken before a magistrate and, upon your plan, committed for trial, not summarily convicted, in that case he goes to the gaol, does he not?—He is committed to prison until the time of trial.

1582. On the present system of classification, he associates with men and boys who, like himself, have been committed for the same legal denomination of offence?—Yes; but if a good boy in disposition, intending to do well, he would then, I think, take no further detriment than he would in the house of correction; he would preserve himself from contamination; he would not enter into conversation with them, or be contaminated by them, because he would have ulterior views.

1583. Do you think that is an observation founded upon a general view of human nature?—It is a view founded upon certain dispositions; human nature is liable to be contaminated continually when it comes in contact with contaminating objects.

1584. Do you not think such cases form an exception to a general rule?—Perhaps it is an exception; but it is a happy exception in the case of a boy having his liberty, with that disposition, instead of being destroyed, as he is in the first instance, by a summary committal.

1585. Assuming the boy, in the case supposed, to have been taken before the magistrate and convicted at once, upon such evidence as shall be satisfactory to a magistrate legally qualified for the duties of his office, and supposing that boy is sent at once to a prison where a good system of discipline is adopted, in which case do you think there is the greatest probability of reformation?—I think the greater would be in his being sent for trial; I think he would be ruined if he were sent to our prison; for a policeman can take him again, when he sees him, as having been a person before committed to prison and convicted; and I think there is a great probability that he might not be convicted before a judge.

1586. When you speak of a policeman taking him up again, do you mean the policeman can take him and commit him to prison without the sanction of a magistrate?—No; but he can take him before a magistrate, and he says to the magistrate, "He is a old offender;" that he has him in his book, and he is a known thief.

1587. Lord *Hotham.*] But the policeman will not take him up except in the commission of some offence?—Yes, if he is doing nothing, and has no visible mode of living.

1588. Mr. *Estcourt.*] Will you explain the distinction you drew just now; you stated, that if taken before a magistrate he would be convicted, but if the same person were sent to gaol and tried before a jury, in the ordinary way, there would be a great chance of his not being convicted; what do you mean by that distinction, when the question assumes that in either case the party is guilty of the offence?—

offence?—In my answer to that question I must contemplate conviction by a jury as well as conviction before a magistrate; what I mean to say is, that I have seen them committed without being guilty.

1589. *Chairman.*] Have you ever visited prisons to which criminals are committed in the first instance for trial?—Yes, many.

1590. Have you ever visited Newgate?—Yes, I have visited Newgate, formerly.

1591. Can you bring to your mind the variety of offences and the variety of characters classed together at certain times there, waiting for trial?—Yes; Newgate, at the time I was acquainted with it, and visited it, was not either in that state it is now, or in the state it should have been at that time.

1592. Taking any county prison, are you not aware the wards to which prisoners are committed for trial, contain characters of various degrees of guilt and profligacy?—In many gaols I think they are very much separated; I have visited Cambridge, for instance, which is well adapted for classification; I think they are as well there as in the house of correction.

1593. No prisoners are now separated before trial?—Yes, boys are put together, and men also; they have room and convenience in that prison to do it.

1594 But in the classes themselves have you not known various degrees of guilt and profligacy associated together, and that for many weeks?—In Newgate I have seen that.

1595. Taking the case, then, of Newgate, do you think any boy committed to such a class could, by possibility, escape contamination and degradation by it?—He would still, I think, be better kept; he might not be contaminated there, because he is looking to other views, and there is a way of escaping conviction, admitting he is guilty; but there is not any escape when he comes to the house of correction, because he is taken down then as a person to be taken up at any time, having been convicted before. If the same process went on under any new law or any new regulation it would amount to the same thing.

1596. Then you think such boys sent to prison before trial, associating with the various guilty characters there, are not at all injured by that association?—I should think they are not injured if they are properly classed or separated, because they cannot speak to any body.

1597. I am asking with reference to persons before trial?—I should think in the new prisons they would escape it.

1598. Do you not think they would be degraded and demoralized?—Yes; but there are a great number committed to prison with no intention of bringing them to trial; to dismiss them by proclamation.

1599. Would they, or not, be injured by the association with other prisoners under those circumstances?—The majority of them would; some would not.

1600. Then if juvenile offenders were committed to prison to await their trial, looking at the prisons as you now find them, and the associations as they now exist, they would in your opinion be injured by that imprisonment?—Yes.

1601. Would it not then be better to give magistrates, properly qualified, and under proper check and control, certain summary power, in order that that previous commitment might not be rendered injurious to the boy, but that he might be committed at once to the house of correction, where a system of prison discipline is adopted which cannot be injurious to his character?—In some instances he would be injured in awaiting his trial in one of these prisons, and there I should think it would lead to precisely the same thing whether he is committed immediately or brought in to await his trial before a jury.

1602. Have you ever had occasion to attend at the police offices?—Yes.

1603. Do you think that the mode of conducting business there is susceptible of improvement?—I think, if the summary power were taken by the magistrates, it would be very much improved.

1604. With reference to the reformation of the criminal, have you had any experience from which you are able to offer any information to the Committee?—Many have been placed out in society who have been reformed in the Refuge for the Destitute.

1605. How do you know they have been reformed?—I saw them in situations years afterwards.

1606. Have you kept your eye upon them subsequent to their discharge?—Yes.

1607. To what do you attribute that reformation mainly?—To the discipline they have had in the prison, and discovering their error, if they were in error,

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and resolving, if possible, if there is an opportunity afforded them of getting any situation in life, that they can earn their bread in honesty; and they are very careful afterwards.

1608. When you speak of a prison, do you mean a house of correction?—Yes.

1609. That is the discipline of the Refuge for the Destitute to which you allude?—Yes; I consider the discipline of the Refuge for the Destitute, as a place for reforming criminals, is superior to ours, because the best boys are selected, and those most desirous of reformation, and therefore they have a better choice than we have.

1610. I believe you have a high opinion of the plan adopted in the Refuge for the Destitute?—A very high opinion.

1611. Then I will just ask you this question: supposing this objectionable power of summary conviction to be exercised in the case of a boy who had committed his first crime, and that a magistrate had the power, in lieu of sending him to Coldbath Fields, of sending him at once to the Refuge for the Destitute, that institution having funds to correspond with the increased claims which might arise upon it, what would be your opinion of that?—I think it would be very desirable to have such a place.

1612. Now, will you say why?—Because, then, the boy would not be sent to any prison; he would be sent to the Refuge for the Destitute; and when he came out of that refuge provided for him, it would be supposed that he had come out with a proper and a fair character; he would acquire a character there.

1613. Then in this particular case, you do not object to the summary power?—I only object to sending him to prison; that is my ground of objection.

1614. But, provided certain prisons for juvenile offenders were conducted upon the same plan, and under similar superintendence as that of the Refuge for the Destitute, you then would see a benefit in extending, under proper check and control, the summary power of the police magistrates?—If it were conducted in a similar way (not as a prison, but as a charitable institution), to be conducted by benevolent men, at their own discretion, with respect to the mode of instruction and the disposal of the boys, then it would be what I should approve; but if it were under the superintendence of the Government, or of persons appointed in that way, it would assume the character of a prison; and I should think, then, it would injure the character of the parties sent there, in the opinion of the public, all through life.

1615. I think you had some complaint to make respecting the taking possession occasionally of the property of the prisoners by the police; will you state the nature of that complaint?—It think it is a great hardship upon the prisoners.

1616. Will you state any instance to the Committee which has come within your knowledge?—A servant receiving 14 guineas a year wages, living in Pall Mall, was convicted of joining with the charwoman in the house to take her mistress's cloak to pledge it; the police stopped her in doing this; she was tried at the Old Bailey, and sentenced to three months' imprisonment in the house of correction, which she left on the 18th of December last. Her mistress wished that her clothes might be taken away from her house; for when the policeman went, as they do in cases of that kind, to inquire whether there were any stolen goods in the possession of the party, or pawnbrokers' tickets, or any thing of that kind, which might furnish some addition to a charge, her mistress said they might be stolen for any thing she knew, and desired that they might be taken away; and they were delivered to the police; they are usually sold at the end of three months, or six months, at the office, a proper account being taken of them; the money then is ready for the persons to whom they belong, supposing they claim it; or if there be a claimant for the goods previous to their being sold, they are given up. This woman was unwell, and was sent to the hospital, and did not appear for three weeks after she was liberated from prison, and, consequently, her clothes were sold for 12 *s.*, which she valued at 3 *l.*, or three guineas. The superintendent paid the money over to me for her, and it is of very little value to her to supply her with clothes again. I waited upon the superintendent, and he gave me every information with respect to it, and I waited upon the Commissioner yesterday, and he said what I had stated was substantially correct; and this was the least objectionable mode they could adopt. If the prisoners can find out that they are bought by persons connected with the police constables, they would reprove or dismiss them for suffering it, as they caution them against it on all occasions.

1617. Is that the case you had to state?—Yes.

1618. What

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1618. What is your particular objection to that system?—I think it is a hardship upon the prisoners. I asked this question, "Why could not the clothes they had taken be sent to the woman at the house of correction instead of taking them and selling them?" They said it might be certainly.

1619. Do you apprehend that is a case of frequent occurrence?—I have met with some few cases, not many.

1620. All of a similar character?—Yes; differing only in the circumstances.

1621. Has it ever occurred to you to suggest any remedy for that mode of proceeding?—I think the remedy would be this; that the clothes or goods ought to be sent to the prisoners where they are suffering sentence; the police have that mode of doing what they wish, that is, getting the articles removed out of their way; that seems to me to be the only remedy; the object, as the Commissioner informed me, is very desirable, and it seems to be the least objectionable way of doing it.

Mr. *Richard Gregory*, called in; and Examined.

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1622. *Chairman.*] YOU are resident in Spitalfields, I believe?—Yes, I am treasurer of the parish for the paving-rate and the poor-rates; and I had the control of the watch for some time under my direction.

1623. Are you engaged in trade?—I have a very large farm in Essex of between 400 and 500 acres; and I am very largely engaged in the potato trade.

1624. Have you paid a good deal of attention to the subject of police?—Yes; I had at one time 400 or 500 of the inhabitants under my direction as special constables. It is a very disorderly parish, that of Christchurch, in which I live.

1625. Have you paid great attention to the mode of conducting business at the police offices?—Yes, I have paid attention to the subject; I have been in the habit of attending the police offices for many years; almost from my childhood.

1626. Is the business conducted there in a manner that is satisfactory to the public?—I think not; I think the present system is very bad.

1627. Will you state to the Committee what are your objections to it?—One of the objections is, that very frequently when tradesmen or other persons had to attend the police office, on business probably requiring two magistrates, they have nad to wait perhaps for two hours in the forenoon till the second magistrate came; and I have known two or three tradesmen, special constables, leaving their business who had to wait from 11 in the morning till one or two o'clock, when the magistrate has come.

1628. Do you think the public would be as well satisfied if one magistrate were able to act in all those cases in which the law now requires two?—I think much better, and the reason I assign for it is this, that then each magistrate would be responsible for his own acts. I have seen one magistrate decide cases when two were present, and never say one word to the other; indeed I have seen one magistrate turn his back upon the other and treat him contemptuously.

1629. Is the Metropolitan Police Force extended to Spitalfields?—Yes.

1630. Does it give satisfaction?—Very great satisfaction.

1631. Are there many police officers, as they are called, attached to the police offices in your district?—There are a few.

1632. What duties do they discharge?—I am at a loss to know, unless it be to serve a summons or a warrant, or something of that sort. I consider them to be worse than useless.

1633. It has been suggested to the Committee that the police officers should be incorporated with the Metropolitan Police Force, and all the constabulary duties of the metropolis discharged by them, and that the magistrates should be confined strictly to judicial duties as magistrates; what is your opinion of such a scheme?—If I had any thing to do with it, the whole of the old police should be discharged; they should not be mixed up with the new police at all; the whole business should be done by the new police, and they should be answerable as they are at present, to their superintendent, and the superintendent to the Commissioner. In that case the business would be much better done, I have no doubt.

1634. If a magistrate, then, were strictly confined to his judicial duties, and had nothing to do but to hear and decide upon the cases brought before him, you think it would be an improvement?—I think if the magistrates of the police offices were to come, as the judges of the land do, punctually to their time, we will say 10 o'clock in the morning, the police office to be opened at half-past nine, and the clerk to be there to arrange the business, one magistrate could decide upon all the

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cases, and there should be no evening duty for the magistrates at all; if they were to stop from ten o'clock till four, one-half the police offices and half the number of magistrates would be sufficient to do the business, and it would be done much better.

1635. Are you at all acquainted with the Thames Police?—I very seldom go there; I have been there, and I know Mr. Ballantyne and Mr. Symons very well.

1636. What you have just stated would comprehend the placing that force also under the Commissioners?—Yes; the horse police and all; I may state there has been a great improvement in the horse police in the district where my farm is, since they have been under the Commissioners.

1637. You think the public would be very well satisfied with that?—I am sure they would; I think in addition to the horse police, if there were three or four foot police added to them they would be a very great benefit in the country; for instance, my farm is just five miles from Whitechapel Church, and from the farm opposite, last Sunday fortnight, they stole four sheep; last Sunday they stole another; they know the time the horse police go out, and if they had some of the foot police to go down the lanes and bye-places, it would be attended with an expense, but it would be a very great public benefit, I have no doubt.

1638. In case of a robbery do you not apply for assistance to the police officers at the police office?—No, I myself do not; I always apply to the new police.

1639. Do you not find the old officers to be more competent or skilful in the detection of crimes?—No; the old system of police was this: they kept up the old thieves, and they corresponded with them; so that if you lived 30 or 40 miles in the country and your house was robbed, and you came to London to make inquiry into it, the officers got information from the old thieves, who train up the young ones, and who give the police officers that sort of information.

1640. Do you think that system has been abated under the new police?—Yes, a great deal, but it is still carried on; there are many very intelligent, clever men in the new police; they are far superior to the old.

1641. Must it not have a bad effect on the character of the police officers to be thus constantly associating with known thieves?—Certainly; there are very few people who know the system, or will know it.

1642. You think it must have that effect?—Yes, for my own part, I know all tricks.

1643. You have not much confidence, then, in the old officers?—Not any; I have great confidence in the new ones.

1644. Can you state any instance to justify the opinion you have expressed of your want of confidence in the old officers?—I can state that there is an officer who was guilty of this conduct. When I had the special constables under my direction, we were out and apprehended several very bad characters; nobody could go along the streets at night for them. We used to go 20 together, and we apprehended one very bad fellow, in particular. It was my custom, in the morning, to give every man a pint of coffee and a slice of bread and butter before he was taken before the magistrates, but no beer; having the control of the watchhouse, being the treasurer of the paving-rate. He called in one day and said, he hoped so and so would not come near him (naming an officer), for he had been obliged to allow him 1 *l.* a week for some months, and he himself had told me to apprehend him to get rid of him. I brought his conduct before the magistrates, and two of the magistrates were for writing to the Secretary of State to dismiss him; but he was not dismissed.

1645. Has any other case occurred within your knowledge?—There was a case where my brother was robbed, and one of the officers would have taken 36 *l.* of his money, if he had not prevented it; he was robbed by a prostitute, and after she was in custody, the officer wanted to go and search the house by himself. I would not leave him; and I found 36 *l.* there. He said he was a constable, and he should take it; and he would have kept it; but at the Old Bailey I went out and fetched him in before the Recorder, Sir John Silvester, who made him give it up.

1646. Are you acquainted with the Lambeth-street Office at all?—Yes, I frequently go there.

1647. Do you think the public, in your part of London, would be satisfied, were the districts of those two offices consolidated?—I am sure the public would be much

much benefited by it, supposing the magistrates came at the proper time; that the business were conducted by one instead of two, and that there were no night duty; when we had the special constables, I always complained of the mischief attending the night duty.

1648. Will you describe what that mischief was?—Sometimes I had 10 tradesmen going down to the office at night, and friends of the prisoners took them into public-houses, and those people, though I have been with them till the morning, have been so unsteady, that they have been knocking people about; so it is with the new police; I had occasion to speak to the Commissioners, some months ago, and they said that the friends of the prisoners sometimes took them into public-houses at night, and made them unsteady; I am sure it is attended with a very bad effect.

1649. Lord *Hotham.*] You do not think the convenience of tradesmen is consulted by the evening sittings?—No, not at all; it is also very objectionable in this way: if a drunken fellow runs against you in the street, and you knock him down, you are taken to the police office for the assault, and perhaps at eight o'clock, one magistrate comes, and he says, "There is only one magistrate; I cannot deal with it; you must find bail;" perhaps you cannot do that immediately, and you are handcuffed to a common thief or vagrant, and are taken off in the van to the common prison, and turned loose among them; it does not signify how respectable you are; if there were no evening sittings, you would be taken to the police station; you would find a sober, steady man there; he would take bail for your appearance there next morning, and, after a night's rest, you would go washed and steady, next morning, to answer any charge that might be brought against you; whereas, if you were sent to prison, you would be horrified, and could not sleep all night, expecting to have your throat cut every minute; I think it is a very bad part of the system; gentlemen, too, are not so competent to judge of matters of law, or of fact, at seven in the evening, as they are at 10 o'clock in the morning.

1650. *Chairman.*] Do you think it would be advantageous to extend the civil jurisdiction of magistrates at all in cases of small debts, or in all cases of disputes about wages between masters and servants?—In respect of wages it might be very well; but in respect of small debts, I am one of the commissioners of the court of requests, and have been so for many years, and I think it would take up too much of the magistrates' time. I have been engaged for 30 hours a week in hearing cases, and disposing of them in a very summary way, allowing people to pay 6*d.* or 1*s.* a week. It would require a very large establishment; there would be a great difficulty about it in town; in the country I think it would be very beneficial. In the parish of Westerham, in which I reside, one of my men, a blacksmith, was summoned down to Chelmsford, and he lost two days' work. If the magistrates of that district had the power to deal with a case of that sort, it would be very beneficial. I mentioned the subject to Mr. Mashiter, a magistrate for Havering-atte-Bower; he told me they had the power in that district, but it was so expensive a process, that what with paying the lawyer and clerks who attended, instead of being a benefit it was a great injury. I believe they had to pay as much as 7*s.* or 8*s.* for the hearing of every case. At the court of requests the summons is 7*d.* and the hearing 4*d.* That is a very summary way of proceeding.

1651. If one magistrate were taken from each office, and two sat alternately, each having all the powers now occasionally given to two, they would of course have much more duty to perform?—Yes.

1652. Do you think there would be any objection on the part of the public to improve their salaries, requiring higher qualifications for the gentlemen who fill those offices?—I am very confident that one good magistrate would be better than three such as the public has been served with. I think two would be quite sufficient, supposing they attended to their duty as the judges do. That is, that a magistrate should not say to a man, "Come at 10 o'clock," while he himself comes at one. He should be bound to be at the office punctually at the time, and then I am very confident the business would be better done, even by the present magistrates, for there are some very able men among them, such as Mr. Hardwicke, Mr. Combe and many other gentlemen.

1653. Supposing the alteration were to take place which has been hinted at, do you not think the offices might be very materially improved, converted more into courts, and that the business might be discharged more quietly and orderly?—Certainly, considerably. The new police office, in Worship-street, is a very good office, save and except that they have selected a large room for shrimp-women and

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oyster women, and the cab drivers, who come in and make a great piece of work, which, if I had the regulation of it, should not be. They should be more like courts of justice, and there should be two rooms, so that if there were a surplus of business, one magistrate might go into one room and another into another. I think by that means the business might be got through by three or four o'clock in the afternoon, even if there were twice as much business as there is at present.

1654. Are there many lodging-houses in your part of the town?—Yes, a great many of the very lowest kind; I went to some this morning, on purpose. There is a bad fellow, named Sheen, who was tried for cutting his child's head off, some years ago; he lives in Algier-place, Wentworth-street, in the parish of Whitechapel, and he keeps three of these low brothels; we took 18 boys and girls out of those houses, some of them very young, three weeks ago, before Mr. Hardwicke; and I have no doubt that houses of that description are the cause of the increase of juvenile offenders, more than any thing else, and I will explain why:—boys and girls of tender age are suffered to remain there to be fed, and they go out and thieve; the girls, picking up persons, under the cloak of prostitution, and bring them to these houses, where they plunder them, the owners of the house receiving the plunder. These boys and girls are sent out at all times of the morning, noon and night, the boys for the purpose of picking pockets and the girls for the purpose I have described, and they prowl about Whitechapel, on both sides of the way until eight o'clock, when the City Day Police go off; then they go across Whitechapel into Aldgate, and prowl along up to the Mansion-house, and round that neighbourhood, and commit all manner of depredations.

1655. What opinion do you entertain of the City Police, as it is now managed?—It is a very bad one, very bad indeed. I may state an instance, which I mentioned to the late Lord Mayor, when I was dining with him at the Old Bailey; I asked him what he thought of his police, when a carter jumped out of his cart and apprehended a notorious thief, with his companion and two women, who had been plundering in the city for 30 years, to my knowledge, and yet had not been taken up, although their conduct was so notorious that the man jumped out of the cart and apprehended them, and they were convicted at the Old Bailey sessions, while I was there.

1656. Do you think the parties were known to the police?—Yes, as well as I know every man who works upon my farm.

1657. What reason have you to assign for their not taking them up?—There are various reasons: in the first place, there is a regular pay system; half of our old police have received more money from the old thieves they suffered to remain, than they have for their services from the public.

1658. Do you mean the police for the city?—Yes, the police for the city and the country.

1659. Mr. *Estcourt.*] Do you apprehend the same evil is now existing which existed in the time of the old police?—I think nothing else can be expected; whenever I go into the city, I see old thieves I have seen for many years, and they are never brought to justice by the police; they are brought to justice by individuals.

1660. Are you in the habit of attending the city police offices as much as the others?—Not so much; it is out of my district; and since I have had my farm, and have had a very large business there, I have not had so much leisure time; when I was a young man I attended them very much.

1661. Have you recently, within the last 12 months or two years, had opportunities of witnessing the conduct of the City Police?—Yes, I have; and it has not been what I admire; and it never will be a good police until the whole of the old police is eradicated and put under proper authority.

1662. As compared with what is called the Metropolitan Police, which do you consider the most efficient force, setting aside for a moment the consideration of the inconvenience which arises from having different jurisdictions?—The Metropolitan Police is, fifty to one, the best.

1663. Lord *Hotham.*] Has not the City Police been new modelled within the last few years?—Yes; but as long as the heads are not responsible for the conduct of their men, it will never be a good police; I may mention, as an instance, that there was a city marshal, not long ago, who was mixed up with a transaction about some stolen property; there was a robbery at the Royal Exchange of some watches; there was an application made to an old thief, and the thing was all hushed

hushed up, and the property was sent back; the city marshal still retains his place. Now if any one of the new police had taken any part in such a negotiation, and it had come to the ears of the inspector, if it had been his best friend, or his brother, he would have reported it to the Commissioners, and the Commissioners would have inquired into it, and the man would have been dismissed immediately, without any ceremony.

1664. *Chairman.*] Provided police magistrates were raised more to the rank of petty judges and sat in courts, conducting the business more like that of the higher courts, do you think their summary jurisdiction might be extended with advantage over a certain class of petty crimes?—I suggested before, I think, to the Police Committee, of which Sir Robert Peel was the chairman, that I thought if they tried prisoners at the police offices with a jury of three or five, and even suffered them to go so far as to transport the prisoners, it would be very beneficial. But if you give one magistrate a summary power, I would not give it so far as to transport a man; I would give them a summary power of imprisoning for twelve months, because upon the spot they know a man's character. I would either give them a summary power to go as far as twelve months' imprisonment, or give them a jury of three or five persons to try the cases weekly; to select one day of the week for it.

1665. What do you think would be the immediate effect on crime, if such a plan were carried into practice?—I know from my experience that it would be very beneficial.

1666. How do you think it would operate to check crime?—Suppose a person is taken before a police magistrate to day for a petty offence, the magistrate says "I will remand you." Before that prisoner can be brought up again, an application is made to the prosecutor, and I know instances of that myself; I was offered 300 guineas by a party not to appear; then they send their sister or their mother or their aunt, or they go to some person who is a tradesman in some business connected with them and who deals with them, telling them a sad tale of woe, hoping they will not persevere, for if the person is sent to prison he is ruined for life, and they prevail on parties not to appear; or if they do not succeed in that case, they succeed in this way: if the party is committed to prison and the prosecutor and the witnesses go before the grand jury, they get hold of the leading witness and give him a bribe of 5*l.* or 10*l.* or 50*l.* The grand jury, not being in possession of the depositions before the magistrates, the witnesses give evidence before them as directly contrary to what they have given before the magistrates as light to dark, and then the grand jury ignore the bill.

1667. Lord *Hotham.*] Do you mean to say they give the witness a large bribe to stay away?—No, for contradicting the evidence; supposing you are robbed, and when you come before the magistrate, you say, "There is a particular shilling, or a particular half-crown, or a handkerchief, I can positively swear is mine;" then, if you are got over by a bribe from the prisoner, when you go before the grand jury, you say, "I cannot identify any of this property; I cannot swear to any one article, and I will not." If I were on the grand jury, I should say, "It is of no use to trouble the court with this; we do not know what evidence you have given before the magistrates, and therefore we will ignore the bill;" but if the grand jury were done away with, or, if it is still to exist, if they were to have the depositions, it would be very beneficial. I should say, a sufficient number of clerks should be kept at each police office to write out a double set of depositions, and that the foreman of the grand jury, when a bill of indictment is found, should be furnished with them; the clerk of the indictments should be in possession of the duplicates of the depositions, which should be handed to the foreman, that when, for instance, indictment, No. 1, comes before him, he should have the depositions taken before the magistrates; and you would find that, where you have 20 bills ignored now, you will not have one. I have been upon the grand jury several times, and I have heard witnesses give their evidence before the magistrates, and come before the grand jury and flatly contradict what they have stated.

1668. Then the practice of which you complain is a frequent one?—Yes; the magistrates only commit upon clear cases, and yet every session there are 10 or 12 bills thrown out by the grand jury, and it is done in that sort of way.

1669. *Chairman.*]—Have you any thing else to suggest with a view to the prevention of crime?—Great good would result as to the prevention of crime if the police had the power, or if not I think an Act of Parliament should be brought in to do away with low brothels or lodging-houses which are the great nests of thieves. The

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fact is this, two or three young girls get there who go about the streets dressed out, and they frequently seduce a respectable man's daughter to go to the house, where they become thieves and prostitutes. The keepers of those houses are men of the lowest and vilest description, who live by the plunder those boys or girls collect. Some time ago we succeeded in driving some of them out, but now they are located again in Whitechapel. If the police had a power to apprehend such persons, and there was any law to punish them, you may depend upon it you would have crime decrease among those juvenile offenders very fast. I would also observe, that as the law stands at present, there is no mode of preventing or punishing indecent or obscene language in the streets, which frequently leads to a breach of the peace, and is injurious to the morals of the rising generation. I may state that I was going the other day through this haunt of vice, Wentworth-street, and I followed two girls not more than 13 years of age, with two boys of about 12, and I never heard such expressions come out of the mouths of the oldest thieves or prostitutes; I think if a power were vested in the magistrates to give them a summary jurisdiction of imprisoning such persons for a month in the house of correction with 14 days' solitary confinement, it would be extremely beneficial to the public. I may add that one frequently sees obscene words written on gates or doors, which ought to be put a stop to. At present there is no law to prevent the writing of that sort of indecent rubbish, and if they were to give one of them a month's imprisonment, with seven days' solitary confinement, you would see that it would not be so common a thing as it is.

1670. Is there any thing else you wish to suggest?—There is another thing which is very prevalent at police offices which might be remedied, and that is, with respect to common informers; if the whole of that business were in the hands of the police, it would be much better done, and be more satisfactory to the public; I should say that the informers should receive no emolument, that the fine should be handed to the Police Commissioners, and they should dispose of it as they in their judgment should think fit; for instance, a man is unloading his cart and leaves a cask at his door; an informer swears it has been there two hours, and perhaps it has not been there 10 minutes, and if the police had the power to interfere, they would give notice to any of the inhabitants, that if they did not remove it they would be fined, and if they persisted after that notice, they would be summoned, and would go fairly before the magistrate.

1671. Are you acquainted with the lock-up houses attached to police offices?—Yes; they are very bad at present; in the case of persons charged with a common assault, they are taken in the van, perhaps handcuffed to a common prostitute, no matter how respectable they may be; that is a very bad system.

1672. How would you remedy that?—I would have a division in the van as far as that is concerned; the first part might be for assaults and the second part for felonies; there would be no great fear of persons escaping for assaults, but there would be great fear of escape for felonies.

1673. Have you ever heard of persons misconducting themselves in the van?—No; but I should think they do not conduct themselves very well, because they go at night; if they went in the day time, nothing of the kind would occur.

1674. Males and females go together sometimes?—Yes.

1675. And they are not separated?—No; I know the Court of Aldermen wrote to the magistrates at Lambeth-street Office about keeping the van till 10 o'clock at night to receive prisoners, but if the magistrates came at 10 o'clock they would have no occasion for night duty; they would send off the prisoners at two or three o'clock, and the public would not be detained so much as they are now.

1676. Is there any thing else you wish to state?—I wish to impress upon the Committee, that if any thing could be done with these low brothels, nothing would tend so much to prevent the present increase of juvenile offenders.

1677. You spoke in your evidence, just now, of abolishing those brothels, or lodging-houses; you mean placing them under proper control?—Yes, placing them under the control of the police.

1678. How would you distinguish such houses from others which are of a less objectionable description?—I think they should be subject to the inspection of the police at all hours of the night; that the police should have the

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power to take up a child of 10 or 11 years old, if found in company with a man of 30 or 40 or 50 years of age at a place of that description; I think they could distinguish them in that sort of way. I used to take upon myself, when I saw two persons of that kind, to send one one way, and another another. I have seen one of these juvenile prostitutes get hold of a sailor, for instance; I have said, "Come, my friend, you will get robbed; you had better go home." "I do not care." I have said, "Very well, then, I see you are drunk, I will lock you up in a safe place;" and I have said to the girl, "You go that way, or I will take you to Worship-street in the morning." If you do that you will shut up those houses.

1679. Would there not be some difficulty in distinguishing the kind of brothel you would suppress, from others?—No, I think they might easily be distinguished. I went, the other day, to a house in Wentworth-street, which is kept by a very notorious character, and there were 18 or 20 men and women, boys and girls, in bed together, all in two rooms. The fellow who keeps the house has a sort of table for them; some pay 6 *d.* for their bed, some 4 *d.*, and they all go out thieving. If they steal a handkerchief, the man says, "You had your dinner yesterday, that was 4 *d.*; I will take this handkerchief for it;" and if they steal a watch, which is worth perhaps 20 *l.* or 25 *l.*, it will fetch 20 *s.* or 25 *s.* in the market, and he says, "This will go on for next week."

1680. What market do you mean?—Thieves call it the market; they are disposed of to regular fences.

1681. Do you think prisoners discharged from the house of correction in Cold-bath-fields, where the discipline is comparatively good, experience great difficulty in finding employment?—I think so; I myself punished one of my waggoners for stealing six cabbages from the waggon, and Mr. Walker gave him a month in the house of correction at Ilford; when the poor man came out nobody would employ him, and he was literally starving; I was sorry to punish him in the first instance; and I met the man after he came out, and said, "I am sorry you did not know how to conduct yourself;" he replied, "I have been severely punished;" I said, "Is there a possibility of your not doing so again?" he said he never would; I took him again, and he drives a team worth 200 guineas, and a better servant I never had; I think if there was a place established, or a part of the penitentiary was set apart, where all prisoners discharged from prison might have the option of going, it would be extremely beneficial; they should be worked hard; they should be fed hard; they should rise at four o'clock in the summer, and six in the winter; they should have an hour for prayers and breakfast; they should work till 12 o'clock in the day; they should be suffered to go out for two hours in the winter to look for employment, and in the summer three hours; and if they committed any depredation when they were out, they should be transported for life; they should be suffered to remain two or three months there, till they got employment, for, at present, a judge will say to a poor wretch, "You were here last sessions;" when he has been turned out of the house of correction, without any means of subsistence; I believe they give them 1 *s.*; but that man can hardly break his fast unless he steals; how can he reclaim? he cannot do it; there is no opportunity for him; but if there were an asylum for these poor wretches to go to, they might be made good members of society; and with respect to the jurisdiction given to the magistrates, I would go further with respect to juvenile offenders; if it were a boy's first offence, he should have the option of going to prison, or to an asylum; if I had any influence with His Majesty's Government, I should have a ship moored at Woolwich, and every boy who was committed to the house of correction, or any other place, should have the option, when he came out, if he wished to reclaim, of going there, and there he should be brought up to the navy; after that plan had been tried a little time, I think every ship going out of the river would be glad to take boys of that description. and then you would provide for them; you would take them from their old habits and their old companions; it would be a great benefit to them, and it would make them good members of society.

1682. Do you mean such a plan to take effect after trial and conviction?—After summary conviction.

1683. But you would only allow it to take place after they had been punished?—Certainly; and the punishment should be severe, and some part of it solitary; for nothing affects prisoners like solitary confinement. If it were a boy's first offence, and there were any idea of reclaiming him, I would not give him above five days' solitary confinement in the house of correction, or any other place the

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Government should appoint. At the time he comes out, he should have the option of going to the ship, as a place of refuge, where he should be trained up to the naval service; and as we are not to have impressment, these boys might be brought up to the navy, and might become very beneficial to the community.

1684. Then, subsequent to conviction, you would require that criminals in general should be subjected to severe discipline, and on their discharge they should be allowed to stay for a given time, either at such a vessel as you propose, if a boy, or in some place connected with the penitentiary?—Yes.

1685. There to be subject to certain discipline?—Yes, and that should be severe.

1686. But with liberty of egress for the purpose of finding work?—Yes. At present you give them no chance of reclaiming; they must thieve, and go back to their old haunts or starve. I have sat on the bench with the magistrates and thought of it a thousand times; and until you do establish something of that kind, you may depend upon it you will have no decrease of crime. There is no opportunity for them to reclaim.

1687. Do you not think that colonial emigration offers a means of relief?—Yes, but they would not go, if they had the option of staying at home. Supposing there are 30 or 40 young thieves belonging to a gang; they have all girls, and they say, "Will you go and leave me, Jack?" and so on; you cannot separate them. You separate them while they are in prison, but when they come out they all congregate together again. I wish to mention, also, that great mischief results from suffering raffles at public houses, coffee-shops and other places of that kind.

1688. Are you of opinion that much mischief results from the present gaol association?—Yes, there can be no question of it; you cannot separate them.

1689. At the places of detention you spoke of for discharged criminals, you would, of course, require that there should be a severe discipline maintained in them, in order to prevent men staying there longer than necessary?—Yes, to prevent people committing crimes to get there, that is the great difficulty; but if you make a thief rise early and fare hardly, you will make him an industrious man. They should have very little better fare than bread and water, they should have plenty of work, and hard lying, good iron bedsteads and mattresses.

1690. Just enough, in fact, to prevent honest men from resorting to crime to obtain the necessaries of life at such a place?—Just so.

APPENDIX.

Appendix, No. 1.

REASONS
For annexed CLAUSES.

CLAUSE 1.—Without such a power as that contained in this Clause many offenders whose names, persons or places of residence are unknown, must escape punishment. Take, for instance, the case of utterers of counterfeit money: what chance would there be of their apprehension, if a warrant must first be obtained from a Magistrate? The Police are consequently compelled to exercise a power, which they do not lawfully possess, of apprehending, without warrant, in such cases. But this is only substituting one evil for another, and tempting the commission of a breach of the peace, or perhaps serious injury to the constable, for which there would be no legal redress or punishment. By the General Turnpike Act, and by many local Acts, a power is given to apprehend such transient offenders; and the same seems necessary and may be safely entrusted to the Metropolitan Police, to the extent expressed in this clause. And for the same reasons the power of remanding for further examination in such cases is absolutely necessary.

CLAUSE 2.—Persons keeping brothels or gambling-houses must be proceeded against by indictment; those keeping unlicensed theatres may be proceeded against by indictment, or in certain cases be treated summarily under the Vagrant Act. It is well known that the proceeding by indictment is expensive, dilatory and almost wholly inefficacious; and there is no means thereby of getting at the root of the evil, by reaching the person who has afforded the opportunity of committing the offence, by knowingly letting his property to be used for the illegal purpose mentioned. The summary proceeding

CLAUSES
Suggested by *James Traill*, Esq.

1.
Power to Police Constable to apprehend without warrant in certain cases.

AND be it Enacted, That it shall be lawful for any constable belonging to the Metropolitan Police, during the time of his being on duty, to apprehend all loose, idle and disorderly persons whom he shall find disturbing the public peace, or whom he shall have just cause to suspect of evil designs; and all persons whom he shall find between sun-set and the hour of eight in the forenoon, lying in any highway, yard or other place, or loitering therein and not giving a satisfactory account of themselves; and any person who shall be charged with any indictable or other misdemeanor, for which he shall be liable to be summarily convicted and imprisoned by any Justice of the Peace, or who shall be found in any brothel, gambling-house, unlicensed theatre, or other disorderly house, without lawful reason for the same (such constable being hereby authorized to enter into such brothel, gambling-house, unlicensed theatre or other disorderly house, for such purpose, at any time in which the same shall be open for the reception of persons resorting thereto), and to deliver any person so apprehended into the custody of the constable appointed under this Act, who shall be in attendance at the nearest watch-house, in order that such person may be secured until he can be brought before a Justice of the Peace, to be dealt with according to law, or may give bail for his appearance before a Justice of the Peace, if the constable shall deem it prudent to take bail in the manner hereinafter mentioned; and it shall be lawful for any Justice of Police to remand to prison for further examination any person who shall be charged (with or without warrant) with any such indictable or other misdemeanor, or take his or her recognizance as hereinafter mentioned.

2.
Power to Justice of Police to fine persons keeping or knowingly letting any brothel, gambling-house, or unlicensed theatre.

And be it further Enacted, That every person keeping, using or knowingly letting any house, barn, shed, outhouse or other premises for the purpose of gambling, or being used as a private or unlicensed theatre as aforesaid, and all persons found therein shall be liable to be apprehended by any constable and detained as aforesaid, until he shall be taken before any Justice of Police aforesaid; and every person keeping, using or knowingly letting any premises as aforesaid, for such purpose as aforesaid, and all persons gambling or performing, or being therein without any lawful excuse, shall forfeit any sum not exceeding

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ing in this Clause would operate directly to correct, or at least to check the evil.

CLAUSE 3.—A provision already exists in the Metropolitan Police Act, 10 G. 4, c. 44, s. 11, empowering the constable on duty at the station to take bail in cases of petty misdemeanor. A similar power existed under the former Police system, and was exercised to a much greater extent than it has been by the Metropolitan Police, owing to the jealousy with which, at its first establishment, that force was viewed. Those who are sufficiently acquainted with the character of the Metropolitan Police force, the working of the system, and the nature and motives of many of the charges made at the station, will have little hesitation in admitting that the constable on duty may safely and beneficially be entrusted with the power of taking the recognizance of the party charged, when that party is known, or sufficient security for his appearance is offered, except where the charge is of a serious nature; and no charge, though nominally, is really of a serious nature, where the person making the charge will not bind himself to appear before the Magistrate. This power must, of course, be restricted to cases where the constable has no knowledge, or strong reason, independently of the charge, to believe that the accused has actually or probably committed the offence (if felony or grave misdemeanor) with which he is charged. This power of taking bail conferred upon the constable, which is in favour of liberty and presumed innocence, should, of course, *à fortiori*, be competent to the Magistrate, who, upon the hearing of the case, thinks the charge, though one of felony, does not afford *primâ facie* evidence of the commission of the offence. As the law now stands, a Magistrate cannot take bail in felony till the depositions are complete, and must commit to gaol for re-examination, however respectable the party, or sufficient his bail.

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ceeding pounds, or in default of payment thereof be committed to the House of Correction to hard labour, for any period not exceeding Two months, as to the Justice of Police aforesaid before whom such person shall be taken shall seem meet.

3. Power to take Recognizances at Station-house, on charges of petty Misdemeanor.

And be it Enacted, That when any person charged with any petty misdemeanor, shall be brought, without the warrant of a Justice of the Peace, into the custody of any constable of the Metropolitan Police in attendance at any station-house, during such time as the Police Office is closed, if within the limits aforesaid, or at such time as that he cannot conveniently and within a reasonable time be taken before a Justice of the Peace, if without the limits aforesaid, it shall be lawful for such constable, if he shall deem it prudent to take the recognizance of such person, in the sum of pounds, with or without sureties, conditioned as hereinafter mentioned; and when any person charged with any felony, or transportable or other grave misdemeanor, shall be brought without warrant as aforesaid into the custody of any such constable, under such circumstances as hereinbefore mentioned, it shall be lawful for such constable to require the person making such charge to enter into his or her recognizance in the sum of pounds, conditioned as hereinafter mentioned, and upon his or her refusal so to do it shall be lawful for such constable, if he shall deem it prudent to discharge from custody the person so charged as last aforesaid, upon his or her recognizance in the sum of pounds, with or without sureties, conditioned as hereinafter mentioned; and every such recognizance as aforesaid shall be without fee or reward, and shall be conditioned for the appearance of the person or persons thereby bound before the Police Justices of the district, in which such station shall be situated, at the next sitting of such Justices, or if there shall be no Police Office in such district, then before the nearest Justices of the Peace sitting in Petty Sessions at the next sitting of such Justices, the time and place of such appearance respectively to be specified in such recognizance; and the constable shall enter in a book, to be kept for that purpose in every police station, the name, residence and occupation of the party and his surety or sureties (if any) entering into such recognizance, together with the condition thereof and the sum thereby acknowledged, and shall lay the same before such Justice as shall be present at the time and place when and where the party is required to appear; and it shall be lawful for the Justice of Police, if he shall think it prudent, to take the recognizance (with or without sureties) of any person who shall be charged before him with any felony or misdemeanor conditioned for the appearance of such person before the same or some other Justice of Police at a day and place to be therein expressed for further examination; and if the party does not appear at the time and place required, or within One hour after, the Justice of Police, or Justice of the Peace, who shall be then and there present, shall cause a record of the recognizance to be drawn up, to be signed by the constable, and shall return the same to the next General or Quarter Sessions of the Peace, with a certificate at the back thereof, signed by such Justice, that the party has not complied with the obligation therein contained, and the Clerk of the Peace shall make the like estreats and schedules of every such recognizance, as of recognizances forfeited in the Sessions of the Peace; and if the party not appearing shall apply by any person on his behalf,

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to postpone the hearing of the charge in respect whereof such recognizance has been taken, and the Justice shall think fit to consent thereto, the Justice shall be at liberty to enlarge the recognizance or recognizances to such further time as he shall appoint; and when the matter shall be heard and determined, either by dismissal of the charge, or by binding the party charged to answer the matters thereof at the Sessions or otherwise, the recognizance or recognizances for the appearance of the party or parties before a Justice shall be discharged without fee or reward.

CLAUSE 4.—The assaults upon the police are frequently of a brutal nature, and the persons by whom they are committed are usually a low, dissolute description of offenders, to whom the mere confinement of the gaol is an inadequate punishment.

4.
Power to commit to hard labour in default of payment of fine, for assaults on Metropolitan Police.

And be it further Enacted, That if any person shall assault or resist any person belonging to the Metropolitan Police Force in the execution of his duty, or shall aid or incite any person so to resist, every such offender, being convicted thereof before two Justices of the Peace, or before any such Justice of Police as aforesaid, shall for every such offence forfeit and pay such sum, not exceeding Five pounds, or in default of immediate payment thereof be committed to the gaol or house of correction for any period not exceeding two calendar months, there to be kept to hard labour, as to the Justice or Justices making such conviction shall seem fit.

CLAUSE 5.—Under the Police, Vagrant or Pawnbrokers Acts, Magistrates are in the constant practice of summarily disposing of cases, in which the evidence, if fully taken, would establish a complete larceny. This power is not only exercised without prejudice or dissatisfaction to the public or the prisoner, but its more frequent exercise is continually called for, in order to save the public expense, and the personal inconvenience of witnesses in prosecuting clear, but trifling cases of felony. Where is the benefit or the necessity for the trial by jury when a boy is seen to pick a pocket in the street, and the handkerchief is found upon him; when a thief is seen to go into a shop, put his hand into the till, and run off with a handful of money, or when a piece of bacon or bread is seen to be stolen from a shop window, and is found in the possession of the thief? The great majority of cases of larceny brought before the Magistrate are of this simple nature; the facts are few, and seldom to be disputed, and the law quite clear, and they are therefore commonly disposed of as cases of felonious intent, of unlawful possession or of illegal pawning; but they are thus disposed of in an objectionable way, as this is a forced application of the law, alien to its original purpose; and they are disposed of in an ineffectual manner, as the punishment is only a short imprisonment in the House of Correction, and the conviction cannot be used in aggravation of punishment upon a subsequent conviction for felony. The Clause proposed seems to provide a fair and satisfactory mode of trial, and an adequate punishment, whilst it secures a prompt decision with little trouble or expense, and renders that decision available as a means of getting rid of the offender upon a repetition of his offence. The advantages of this summary administration of justice are clearly pointed out in the following passages from Bentham's Treatise on Judicial Evidence: "When all the evidence which the case furnishes is brought forward at the first hearing, if the Judge who has taken it is competent to decide, the decision (except when delay is necessary for purposes of deliberation) may and ought to be

5.
Power to Justice of Police to hear and determine charges of simple larceny in cases where the prisoner submits to his jurisdiction;

And be it Enacted, That if any person who shall not appear to have been previously convicted of any felony, shall be charged with having committed within the limits in this Act specified any such offence in the nature of larceny as is not specially mentioned in an Act passed in the Session of Parliament held in the fourth and fifth years of the reign of his late Majesty King George the Fourth, and intituled, "An Act for the establishing a new Court for the Trial of Offences committed in the Metropolis and parts adjoining, and thereby prohibited to be tried by the Justices acting in and for the Cities of London and Westminster, the Liberty of the Tower of London, the Borough of Southwark, and the Counties of Middlesex, Essex, Kent and Surrey, at their respective General or Quarter Sessions of the Peace or any Adjournment thereof," it shall be lawful for any Justice of Police aforesaid to hear and summarily determine such charge, and upon conviction of the person so charged to commit him or her to the house of correction, there to be kept to hard labour for any period not exceeding and during the period of such commitment, such person, if a male, to be once publicly whipped, if such Justice shall think fit, or in lieu of such commitment such offender shall forfeit any sum not exceeding pounds at the discretion of such Justice; but if the Justice of Police aforesaid before whom such offender shall be so charged, shall be of opinion that the punishment aforesaid is not sufficient, or that for any other reason the case is not meet for summary conviction as aforesaid, he shall abstain from passing any sentence, and shall send the person so charged as aforesaid for trial at the next court of general gaol delivery for the county or place wherein such offence was committed: and it shall be lawful for any Justice of Police aforesaid before whom such summary conviction for larceny shall take place, to order restitution of the property stolen, unless such property shall consist of any valuable or negotiable security, which shall have been *bonâ fide* discharged or received for a just and valuable consideration,

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pronounced immediately; a second hearing will only produce useless vexation, delay and expense. But if the Judge who takes the evidence is not competent to pronounce the decision, in every case there must be a second hearing, and the parties are subjected to all the inconveniences which might otherwise be avoided." Again, he observes, "On a first examination the witnesses are commonly taken unawares; they have not received the data necessary to concert a scheme of falsehood; their behaviour, and the manner in which they give their evidence, furnish marks extremely visible, though impossible to be described, by which the degree of credit due to them may be judged of. On a second examination they have had time to arrange their testimony in the way best suited to their own ends; they are now masters of data which teach them what ought to be suppressed, explained, published or added, in order to remove impossibilities or contradictions." He further adds, "When a cause must pass through the hands of two Judges, the chance of an improper decision from the want of ability or integrity in the one or in the other is doubled. If the Judge to whom the preparatory examination was intrusted has omitted or suppressed any essential article, the definitive Judge, be his ability and integrity what it may, cannot fill up the void. If the definitive Judge, from any cause whatever, suppresses, overlooks or misapplies evidence which the other has collected with all possible care, every thing which the latter has done to assist justice, and prepare the way for a good decision, is thrown away." It is partly, perhaps, owing to the operation of some of those causes of error, as well as to the failure of evidence before the Grand Jury, or the infirmity or bias of judgment of the petty jury, that we are to account for the frequency of acquittals, notwithstanding the clearest case for conviction, and even a full and spontaneous confession appearing upon the depositions. These disappointments of the ends of justice, as well as great inconvenience and injury to the public, and also to the accused where innocent, would be obviated in a numerous and important class of offences by this Clause.

CLAUSE 6.—The House of Correction is so constituted, that, except in the case of hardened offenders, it seems to be productive of evil, instead of reformation; or at least, most commonly fails to influence by way of punishment. On conviction for illegal pawning, the magistrate has power to order the offender to be whipped; this is sometimes put in force with great benefit, but the benefit would be more unmixed, if the punishment were inflicted immediately without incarceration. Corporal punishment so inflicted upon juvenile offenders, is only a more solemn and efficacious mode of administering parental correction.

CLAUSE 7.—This Clause provides for the prevention of certain nuisances, offensive to females in particular, which are now punishable only by indictment, but which demand a summary mode of proceeding, being usually committed by persons who are unknown, or of a mean condition, and under circumstances which

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without the person discharging or receiving the same as aforesaid having any reason to suspect the same to have been stolen, or not to be the lawful property of the person receiving payment a consideration for the same: and every Justice of Police before whom any person shall be convicted, by virtue of the provision aforesaid of any simple larceny, shall transmit the conviction to the next court of general or quarter sessions, which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court; and upon the conviction of the same person upon any indictment for a subsequent felony or transportable misdemeanor, a copy of such conviction before such Justice of Police, certified by the proper officer of the court to be a true copy, shall be sufficient evidence to prove a conviction for the former offence: Provided always, That before any Justice shall proceed to hear and determine any such charge of larceny, he shall distinctly state the nature of the charge, and demand of the party charged whether he or she will be tried by such Justice, or be committed for trial by a jury; and if he or she shall declare his or her wish to be tried by such Justice, then such Justice shall make a record thereof, and shall proceed to dispose of the charge in the manner above mentioned, but not otherwise: Provided also, that no forfeiture of goods or chattels, or of the profits of real estate, shall be incurred by reason of any such summary conviction for larceny as aforesaid; and be it enacted, that no such conviction for larceny shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of His Majesty's Superior Courts of Record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

Power to Justice of Police to certify his conviction, to be given in evidence upon conviction of subsequent felony.

6.

Power to order juvenile offenders to be whipped and discharged.

And be it Enacted, That when any person, being a male, and being or appearing to be under the age of years, shall be convicted by any Justice of Police aforesaid of any offence, whereby he shall be liable to be committed to the House of Correction, it shall be lawful for such Justice, if he shall think fit, instead of committing such offender, to direct that he shall be privately whipped and discharged.

7.

Power to punish Persons indecently exposing their persons within certain distance of public ways.

And be it further Enacted, That if any person shall, within the limits in this Act specified, in bathing or otherwise, indecently expose his person within the distance of yards from any street, lane or other place of public resort, or from any dwelling-house, at any hour of the day, between the hours

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which do not admit of the delay and expense, nor require the formality of a trial by jury. The Vagrant Act contains a provision for the summary punishment of persons indecently exposing themselves with intent to insult females; but as this *intent* must be proved as part of the offence, it is obvious that many cases within the evil to be remedied, are not within the words of that Act. The public indecency of persons bathing in broad daylight, either from the banks of the river or from boats, is a matter of frequent and just complaint, and requires such restraint as is imposed by this clause, of which precedents are to be found in most Acts of Parliament relating to canals, docks and reservoirs.

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hours of and from Lady-day to Michaelmas, or between the hours of and from Michaelmas to Lady-day, and shall be convicted thereof before any such Justice of Police aforesaid, such person so offending shall forfeit such sum not exceeding pounds, as such Justice shall think fit.

CLAUSE 8.—Nine-tenths of the assaults amongst the lower classes originate in provocations of this kind, and sometimes the provocation is so great and so repeated, that it is impossible to prevent a breach of the peace, so long as the law affords no effectual protection to the party insulted. The only present remedy is by action or indictment, when the words are slanderous or libellous, or certain threats, or direct challenges to a breach of the peace; but these are proceedings wholly inapplicable to the great majority of such cases. In the Stage Coach and Hackney Coach Acts, and also in the Liverpool Street Act, and in other local Acts, similar provisions are introduced for the protection of individuals or the public, and are productive of much benefit.

8. Power to punish Persons guilty of insulting language or behaviour.

And be it Enacted, That if any person shall, within the limits in this Act specified, use any opprobrious, menacing or insulting words or behaviour, with intent to provoke a breach of the peace, or whereby a breach of the peace may be committed, it shall be lawful for any Justice of Police aforesaid, to summon the person so offending, and to bind him or her to keep the peace towards the party aggrieved; and if during the period for which such person shall have been so bound, he or she shall be guilty of a like offence towards the party so aggrieved as aforesaid, he or she shall forfeit any such sum not exceeding pounds, as such Justice shall think fit.

CLAUSE 9.—By the Pawnbrokers Act, Justices have the power of ordering restoration of goods unlawfully pawned and found upon search warrant in the pawnbroker's hands. By the Act also relating to Marine Store dealers, and by the Police Acts, the magistrate has considerable power to cause the restitution of property which has been stolen or unlawfully obtained; but still there is great necessity for further provision, in order to reach the case of those low brokers, and other dealers in second-hand property, whose premises afford much greater facilities, and are more frequently used for the receiving of stolen property, than those of either pawnbrokers or marine store dealers, in consequence of the strictness of the law relating to the two latter classes of dealers. All persons carrying on this species of business, should be subject to the strictest restraint on behalf of the public as to their dealings, and to the most summary interposition on behalf of the party aggrieved, as to the property taken by them, under circumstances of suspicion or of negligence.

9. Power to Justice of Police to order delivery of goods stolen or fraudulently obtained and in possession of Brokers and other Dealers in second-hand property.

And be it Enacted, That if any goods shall be stolen or fraudulently obtained from any person, and complaint shall be made thereof to any Justice of Police aforesaid, and that such goods are in the possession of any broker, pawnbroker, dealer in marine stores, or other dealer in second-hand property, within the limits in this Act specified, it shall be lawful to such Justice to issue his summons or warrant for the appearance of such broker or other dealer, and for the production of such goods, and to order such goods to be delivered up to the owner or owners thereof, either without payment, or upon payment of such sum and at such time as such Justice shall think fit; and if such broker or other dealer shall refuse or neglect to deliver up such goods, being so ordered, or shall have disposed of or made away with the same, after notice that such goods were so stolen or fraudulently obtained as aforesaid, such broker or other dealer shall forfeit to the owner of such goods the full value thereof, not exceeding pounds, such value to be determined by such Justice.

The next five Clauses and part of the sixth relate to matters of a civil nature, which are the subject of daily and urgent applications at every Police Office. These are matters for which at present there is no remedy except by action at law; but when it is considered that the cheapest action at law will amount to 10*l.* or 15*l.*, at the least, it must be obvious that a great part of the community are debarred from obtaining redress for many petty grievances which, though trifling in value of money, are of vital importance to a poor man. The summary jurisdiction here proposed is limited to special cases, the object being to encroach upon other tribunals or modes of trial no further than seems absolutely requisite, in order to satisfy the pressing necessity of the particular cases: this seems to be a safe mode of going about such alteration of long-established institutions or practices as the change of times or circumstances may have rendered necessary or expedient. Regard must be had, not merely to the practicability and advantage of the alteration, but likewise to the natural and wholesome prejudice in favour of established modes of procedure, notwithstanding their

want of adaptation to the existing state of things. The Police Office establishments, if put upon a more judicial footing, seem to afford the opportunity of introducing, thus gradually and securely, that which has been long required in this country; viz. a system of poor man's justice: and if the experiment shall be found to answer upon this limited scale, of which there can be no reasonable doubt, it will be easy to carry out the principle, and make these offices courts of summary judicature in all matters under a certain limited amount; and to a still further amount by the introduction of some scheme of compulsory reference, not difficult to be devised, which would afford a satisfactory mode of adjudication, without the ruinous expense and delay, and the too frequent uncertainty of a trial by jury.

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CLAUSE 10.—There is great oppression often practised against poor persons in regard to distresses for rent. The statutes providing summary redress in these cases relate only to the amount of the broker's charges. Every thing concerning the legality of the distress, the regularity of the proceedings with respect to the impounding and disposing of it, and the due accounting for the proceeds of the sale, are all the subject of the action of replevin, or under the statutes for illegal or excessive distresses, forms of proceedings which are of course out of the question in every case of weekly or monthly holdings, or where the rent does not exceed 20*l.* per annum, which will include all the cases of labourers, artisans and small tradesmen. To these persons the summary remedy, which is, in fact, the only remedy, is confined to the return of one or two shillings of over-charge in the broker's expenses; whilst the real grievance, the turning the man and his family out of doors, and selling the bed from under him (a measure of severity often as injurious to the landlord as to the tenant) is wholly without redress. This clause is intended to place such cases so far within the control of the magistrate, that at least the harshness of the law shall not be aggravated by injustice.

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10. Power to Justice of Police to deal summarily in certain cases of unlawful, excessive, or irregular proceedings by Landlords or Brokers, in certain cases.

And whereas there are many small grievances, and other causes of complaint, which by reason of the great expense of the present mode of proceeding by an action at law, are wholly without redress, whereby poor persons often sustain great inconvenience and injury; in remedy whereof, BE it Enacted, That on complaint made to any Justice of Police aforesaid, by any person who shall, within the limits in this Act specified, have occupied any house or lodging by the week or month, or whereof the rent does not exceed the rate of by the year, that his goods have been taken from him by an unlawful distress, or that the landlord or his broker or agent has been guilty of any irregularity or excess in respect to such distress, it shall be lawful for such Justice to summon the party complained against, and if, upon the hearing of the matter, it shall appear to such Justice that such distress has been improperly taken or unfairly disposed of, or that the proceeds of the sale of such distress have not been duly accounted for to the person entitled to receive the same, it shall be lawful for such Justice to order the distress so taken, if not sold, to be returned to the tenant on payment of the rent which shall appear to be due at such time as such Justice shall appoint, or if the distress shall have been sold, then to order payment to the said tenant of the value thereof, deducting thereout the rent which shall so appear to be due, such value to be determined by such Justice; and such landlord or party complained against, in default of immediate compliance with any such order, shall forfeit to the party aggrieved the value of such distress, not exceeding pounds, such value to be determined by such justice, or in default of payment thereof, be committed to the common gaol or house of correction, with or with out hard labour, for any period not exceeding One month.

CLAUSE 11.—It is held that the Wilful Damage Act does not apply to the case of tenants committing damage, however wilful, to the property demised. An injunction, or an action on the case, in the nature of waste, or for not leaving in tenantable repair, are the only modes of proceeding competent to the landlord in this case; but the idea of a bill in Chancery, or an action at law against a day-labourer or journeyman mechanic, is absurd. Meanwhile, for want of summary prevention or punishment, very serious and irreparable injury may be done. To provide this summary remedy is the object of this Clause.

11. Power to order compensation for wilful damage by Tenants, in certain cases.

And be it Enacted, That if any person who shall have occupied any house or lodging aforesaid as tenant thereof, shall wilfully or maliciously commit any damage, injury or spoil, to or upon the property in his or her occupation, such person shall forfeit and pay such sum of money as shall appear to a Justice of Police aforesaid, to be a reasonable compensation for the damage, injury or spoil so committed, not exceeding the sum of pounds, to be paid to the landlord or party aggrieved; and if such sum of money, together with costs, if ordered, shall not be paid at such time as such Justice shall appoint, the person so offending shall be committed to the house of correction, there to be kept to hard labour for any period not exceeding Two months, unless such sum shall be sooner paid.

CLAUSE 12.—Another and very common case of dispute between landlord and tenant consists in the obstinate refusal of the tenant to leave the premises, though he has received due notice to quit. As there are many hard landlords,

12. Power to order delivery of possession of houses or lodgings held after due notice to quit, in certain cases.

And be it Enacted, That upon complaint of any landlord of such house or lodging as aforesaid, that the tenant refuses or neglects to quit possession thereof, according to the tenor of any legal notice to quit served at such

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landlords, so there are many unreasonable tenants, and it is a matter of daily occurrence to hear complaints of violent conduct of this kind, by which the landlord, whose subsistence probably is derived from the rent of his house or apartments, is kept out of possession of his property, threatened and set at defiance. Even the offer of relinquishing considerable arrears of rent is often insufficient inducement to procure a quiet surrender of the premises, though held without a shadow of title. Assaults and other outrageous proceedings are the consequences of the impossibility of obtaining legal redress suitable to the condition and means of the parties. In cases of this kind the magistrate does often interfere with success, when, by an actual or threatened breach of the peace, there is a foundation laid for the exercise of his authority; but it is surely an evil which requires remedy, that one illegal act cannot be effectually redressed except through the commission of another.

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such house or lodgings, it shall be lawful for such Justice as aforesaid to summon the tenant so refusing or neglecting, and upon his or her failing to appear, or to assign a sufficient reason for such refusal or neglect, to grant a warrant authorizing any constable to enter into such house or lodgings in the day time, and for that purpose, if necessary, to break open doors and deliver up the possession thereof to such landlord; and if such tenant shall by force or fraud attempt to regain possession of such house or lodgings after the same shall have been so delivered up as aforesaid, such tenant shall forfeit any sum not exceeding Five pounds, or in default of immediate payment thereof, be committed to the house of correction for any period not exceeding One month.

CLAUSE 13.—This is a very frequent subject of application to the magistrate; workmen applying for their tools which have been detained from them; servants for their boxes, or persons seeking restoration of furniture or other goods left for warehouse-room or safe custody; in short, all the various cases in which the action of trover or of detenue would lie. The pecuniary value of the property in these cases is often exceedingly trifling, but, as it is connected with the man's means of acquiring his daily subsistence, the matter is to him of the greatest importance. To bring an action at law is to such persons an impossibility, and in many of the cases would be ridiculous; and even if it were otherwise, the action must often fail, from the want of other evidence than that of the complainant's own statement. Sometimes, upon a suggestion of the goods having been pawned or illegally disposed of, the magistrate is enabled to summon the party; but if the suggestion proves unfounded, the matter must be dropped. Again, when the goods are detained upon an unreasonable demand of money, in that case, by paying the money to obtain the goods, the aggrieved party sometimes succeeds in getting the money back by application to the Court of Requests; but these doubtful and circuitous modes of obtaining redress are not such as an injured man should find himself compelled to resort to. Assaults, threats, or attempts at intimidation or circumvention, are the results of this denial of justice. The remedy proposed seems calculated not only to redress the particular wrong, but likewise to prevent the occurrence of others.

13. Power to Justice of Police to order delivery of goods to the Owner from whom they are unlawfully detained.

And be it Enacted, That upon complaint made to any Justice of Police aforesaid, by any person or persons claiming to be entitled to the property or possession of any goods which are detained by any other person or persons within the limits in this Act specified, it shall be lawful for such Justice to summon the person or persons detaining such goods, and inquire into the title thereto or to the possession thereof; and if it shall appear to such Justice that such goods have been detained without just cause, after due notice of the claim of the person or persons claiming the same, or if it shall appear to such Justice that the person or persons detaining such goods have a lien or right to detain the same by way of security, for the payment of money or the performance of any act by the owner or owners thereof, it shall be lawful to such Justice, either absolutely or as the case may be, upon tender of the amount alleged to be due by such owner or owners (which amount such Justice is hereby authorized to determine) or upon performance, or tender and refusal of the performance of the Act, for the performance whereof such goods are detained as security; or if such Act cannot be performed, then upon tender of amends for non-performance thereof (the amount of which amends, such Justice is hereby authorized to determine) to order such goods to be delivered up to the owner or owners thereof; and the person or persons who shall be so ordered, and shall refuse or neglect to deliver up such goods, shall forfeit to the party aggrieved the full value of such goods, not exceeding the sum of pounds, such value to be determined by such Justice.

CLAUSE 14.—In the Acts of Parliament relating to masters and servants, the words "labourer or other person" are construed to mean such labourers or workmen as were specially mentioned in the Acts relating to particular employments. It is most desirable, however, that the summary jurisdiction should extend to all cases wherein the relation of master and servant subsists. With regard to domestic servants in particular, the magistrate has daily applications, and his interference is attempted to be obtained by some

14. Power to settle disputes between Masters and Servants employed in domestic or other capacity.

And be it further Enacted, That where any disputes or differences shall arise between any master or mistress, and his or her servant, whether employed in labour or trade, or in any domestic or other capacity, and whether engaged by the year or otherwise, whose wages or salary shall not exceed the rate of pounds by the year; it shall be lawful to any such Justice of Police aforesaid to hear and determine all such disputes and differences in such and the same manner, and with and subject to the same powers and pro-

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groundless or frivolous charge of assault, or other complaint over which he has jurisdiction. The summary power in regard to domestic servants would also, it is conceived, have a most beneficial effect in raising the character of such persons. The practice of masters turning away servants, and of servants leaving their masters without notice or sufficient cause, is productive of serious evil.

CLAUSE 15.—The law gives a right of action against the owner of the dog, only when it can be proved that he has had knowledge of the dog's propensity to bite; such evidence is of course in the generality of cases impossible, and it seems hardly reasonable to require it. If this clause may not, upon principles of natural justice, be maintained to its full extent, at any rate the remedy should go so far as to give the party injured a right to compensation, out of such price as the dog would sell for. And the owner should be liable to make compensation out of his own pocket, for damage done by a dog which he has suffered to go at large, after reasonable warning of the dog's propensity, and that he ought to be confined; and further, upon disobedience of an order from the magistrate to keep the dog confined, the owner should be liable to a fine on account of the public risk and alarm he has occasioned, though no actual injury may have occurred to any individual. There are many local Acts which contain such provision.

CLAUSE 16.—This is a Clause requiring little explanation. The power of imprisonment in default of payment, is often absolutely necessary, and in all cases expedient, as without it the ends of justice are often completely frustrated. In the case of workmen's wages, for instance, we find many cases of insolvent masters who carry on their work by practising frauds upon their workmen, who are imposed upon by the apparent business and ability of the master. The Legislature has provided, by a general Act, the 5 Geo. 4, c. 18, for the recovery of penalties by imprisonment in default of distress, but that Act does not apply to orders for payment of money, or where the forfeiture is solely for the benefit of the party aggrieved.

CLAUSE 17.—The 18 Geo. 3, c. , which empowers Justices to allow costs in proceedings before them in petty sessions, applies only to cases in which a summons or warrant has issued. At the time of passing that Act, cases always came before the magistrates in that way, but now the greater part of the business is brought before him on the Police sheet, and there appears no good reason why the

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visions in all respects, as is or are by this or any other Act or Acts directed or provided with respect to masters or employers, and their workmen or labourers, and that as fully and effectually as if such powers and provisions were contained in this Act.

15. Power to order compensation to Persons bitten by dogs;

And be it Enacted, That if any person shall, within the limits in this Act specified, be bitten by any dog which shall have been permitted by the owner to be at large, it shall be lawful for any such Justice of Police aforesaid, to order any sum not exceeding pounds to be paid by such owner to the person injured, by way of compensation, and in default of payment thereof, such owner shall be committed to the house of correction, to be kept to hard labour for any period not exceeding One calendar month, unless such sum shall be sooner paid; and in default of payment of such sum by such owner, or in case the owner cannot be found, it shall be lawful for such Justice to order the dog to be sold for the benefit of the person injured, or to be destroyed, at the discretion of such Justice; and if it shall appear to such Justice that there is reason to believe that any dog or other animal is in a rabid state, or has been bitten by any other dog or animal in such state, it shall be lawful for such Justice to order such dog or other animal to be destroyed; and if the owner of any such dog or animal shall permit the same to go at large after having information or reasonable ground for believing such dog or animal to be in a rabid state, or to have been so bitten as aforesaid; or if the owner of any dog shall suffer the same to be at large after due notice from a Justice of Police aforesaid, to keep the same confined, every such owner so offending, shall forfeit any sum not exceeding pounds, at the discretion of such Justice.

and to fine Persons suffering dogs improperly to be at large.

16. Power to levy sums ordered to be paid to party aggrieved by distress or by commitment.

And be it Enacted, That where any sum shall be declared to be forfeited to the person aggrieved, or shall be ordered to be paid for wages or by way of compensation or for costs, by virtue of any provision contained or referred to in and by this Act, it shall be lawful for the Justice of Police, who shall have heard and determined the matter, to levy such sum by sale and distress of the goods of the person liable to pay the same, or if such Justice shall think fit, to commit the person making default in payment thereof at such time as shall be appointed by such Justice, to be kept to hard labour at the house of correction, for such period not exceeding One month, if such sum shall not exceed Forty shillings; and for such period not exceeding Two months, if such sum shall exceed Forty shillings, as such Justice shall think fit.

17. Power to Justice to award costs on hearing of charges;

And be it further Enacted, That it shall be lawful for any Justice of Police aforesaid, who shall hear and determine any charge or complaint which shall be brought before him, to award such costs, to be paid by either of the parties, as to him shall seem meet, though no warrant or summons shall have issued in consequence of such charge or complaint; and it shall be lawful for the Justice of Police

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the power of granting costs should not apply to such cases also. A small sum allowed, by way of costs, upon dismissal of a charge, would often tend to repair the injury, or remove the dissatisfaction occasioned by the charge, and prevent future contention, as threats, breaches of the peace, or legal proceedings commenced at the instigation of some pettifogging lawyer. This result would be further promoted by the magistrate's interference, and expression of his opinion in the manner proposed, which, though not amounting to a bar to legal proceedings, would contribute to render them unsuccessful, when undertaken without cause, or for sinister purposes; such proceedings are generally adopted in order to extort money. An instance occurred very lately, in which a respectable tradesman will have to pay a sum of 200*l.* or 300*l.* for having made a charge without the slightest malice, and under such circumstances of probability as would have justified the arrest of the party without warrant.

CLAUSE 18.—There is both hardship and impolicy in many of these limited penalties. Several of the most useful provisions in the Metropolitan Street Act, for instance, are rendered nugatory by the penalties being limited to not less than 40*s.*, a sum ruinous to many persons, and utterly disproportioned to the magnitude of the offence. The limitation of the penalty has another mischievous effect, as it affords the motive and the opportunity for compounding the charge.

CLAUSE 19.—Common informers seem to be a necessary evil. So long as they act honestly they are to be treated like other complainants; but when their informations are confined to such offences as have large penalties attached to them, or where the informer is entitled to a fixed portion of the penalty, the conduct of the informer becomes suspicious. Some informers take up only such cases, knowing that they may thereby secure a considerable sum by compounding the matter. The 18 Eliz. c. 5, s. 4, against compounding offences, does not apply to informations before magistrates, and if it did, would be an ineffectual remedy, from the secresy with which such transactions are conducted. The discretionary power in this and the last Clause would be of more service than any positive enactment, as a check to these corrupt practices.

CLAUSE 20.—The Police are often placed in a very awkward position with regard to the possession of property, under the circumstances referred to in this Clause, and it is reasonable that they should have some plain and safe mode of acting pointed out in such cases. It is most unreasonable that a constable should be subject to actions, or obliged to depend upon undertaking to indemnify, in respect to the delivery of property which the

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Police before whom any conviction for felony shall take place as hereinbefore mentioned, to order the expenses of the prosecution and of the witnesses to be paid by and to the same persons and in the same manner as the same would be payable if the person charged with such felony had been committed for trial; and in order to prevent the making of vexatious charges, and to discourage the bringing or threatening to bring actions against persons making *bonâ fide* charges on reasonable grounds, it shall be lawful for the Justice of Police who shall have heard and dismissed any charge to grant his certificate at the request of either party, in which certificate such Justice shall declare his opinion as to the reasonableness or probability of the charge, and the sum (if any) which ought to be paid by way of amends to the party charged, together with the grounds of such opinion; and such certificate, on proof of the signature of such Justice, shall be received as evidence to go to the jury, in any action which shall be brought in respect of such charge.

and to grant certificate as to reasonableness of such charge or tender of amends in respect thereof.

18.

Power to mitigate penalties as Justice shall think fit.

And whereas by divers Acts certain limited penalties or terms of imprisonment are imposed for offences therein mentioned, and no power is given to the Justice or Justices before whom the offender is convicted, to reduce or lessen such penalty or term of imprisonment, whereby much hardship is experienced; Be it Enacted, That, where by any Act now in force or hereafter to be passed a limited penalty or term of imprisonment (in default of payment thereof) is imposed on conviction of an offender before a Justice or Justices of the Peace, it shall be lawful for any Justice of Police aforesaid, before whom such conviction shall pass, to reduce or lessen such penalty or term of imprisonment in such manner as he may think fit.

19.

Power to Justice to lessen the share of Informer as he shall think fit.

And whereas by divers Acts the moiety or other fixed portion of the penalties to be thereby recovered, are directed to be adjudged to the informer, and the same has been found to encourage the corrupt practices of common informers; for prevention whereof, Be it further Enacted, That (where by any Act now in force or hereafter to be passed, a moiety or other fixed portion of the penalty or penalties thereby imposed is or shall be directed to be paid to the informer, not being the party aggrieved) it shall be lawful for the Justice of Police before whom the conviction shall take place, to adjudge such part only of the penalty as he shall think fit to be paid to such informer: Provided always, That nothing herein contained for mitigation of penalties or reduction of informers' share thereof shall be construed to apply to convictions under any Act relating to the Customs, Excise or Stamps.

20.

Power to Justice of Police to order delivery of possession of goods charged to have been stolen or fraudulently obtained and in custody of Constable.

And be it further Enacted, That if any property which shall have been charged to be stolen, or to have been fraudulently obtained, shall be taken into the custody of any constable within the limits in this Act specified, by virtue of any warrant of a Justice, or in pursuance or prosecution of any charge of felony or misdemeanor in regard to the obtaining thereof; and the person charged with the stealing or obtaining thereof as aforesaid

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law has thrown into his hands. It is also a considerable hardship to the person whose property has been stolen without any negligence on his part, that he must be the plaintiff in an action in order to recover back the property from another, who may have been guilty of any degree of misconduct short of felony in receiving it. The Clause proposes to give the magistrate power to decide what is not very difficult to decide; viz. who has the better title to the possession, that is to say, upon which of the claimants it is most reasonable to throw the onus of establishing his right by action.

CLAUSES 21 & 22.—Of a formal nature, except as to single jurisdiction in the latter Clause, which seems expedient and safe to be granted, seeing the qualification and competency of knowledge of police justices, and the publicity with which their duties are executed.

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shall not be to be found, or shall have been tried and acquitted, or if such person shall have been found guilty, but the property so in custody shall not have been included in any indictment upon which he shall have been found guilty, it shall be lawful for any Justice of Police, acting by virtue of this Act, by whose warrant such property shall have been taken, or who shall have committed for trial the person charged with having stolen or fraudulently obtained the same, to make such order as to the delivery of the possession of such property as to such Justice of Police shall seem meet: Provided always, That no such order shall be any bar to or in anywise affect the right of any person or persons to sue for and recover such property at law.

21. And be it Enacted, That the prosecution for every offence punishable on summary conviction under this Act, shall be commenced within months after the commission of the offence, and not otherwise; and the proceedings upon any complaint of a private nature, at the suit of the party aggrieved, and which may be heard and determined by virtue of this Act, shall be commenced within months from the time when the cause of such complaint shall have arisen, and not otherwise.

22. And be it Enacted, That all parishes and places particularly named in the hereinbefore in part recited Act, passed in the Sessions of Parliament held in the 4th and 5th years of the reign of King George the Fourth, and thereby constituted a Central Criminal Court District, shall be deemed to be within the limits of this Act: and that every Justice of Police acting under and by virtue of this Act at any police office within the limits aforesaid, shall have full power to execute alone all such duties and authorities as are or may hereafter, by any Act or Acts of Parliament now in force or hereafter to be passed, be directed or authorized to be executed by two or more Justices of the Peace out of Sessions.

Appendix, No. 2.

CLAUSES suggested by Mr. *Buckle*.

AND whereas it is expedient that, within the district aforesaid, a summary power of punishing persons for certain offences against property should be provided, under the limitations hereinafter mentioned; Be it therefore Enacted, That where any person shall, within the district aforesaid, be guilty of the offence of simple larceny, or of stealing from the person of another without violence, it shall be lawful for any justice, &c., for the district wherein the offence was committed, upon complaint of the party aggrieved, to hear and finally determine the same; and the offender, upon lawful conviction thereof before the said Justice, shall be imprisoned in, &c., with or without hard labour, for such term, not exceeding Twelve calendar Months, as the convicting Justice shall think fit.

Provided always, and be it Enacted, That in case such Justice shall find the felony complained of to have been accompanied by any degree of violence, or shall be of opinion that the same is, from any other circumstance, a fit subject for prosecution by indictment, he

he shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as he would have done before the passing of this Act. Appendix, No. 2.

And be it Enacted, That in all cases of summary conviction punishable under this Act, where the imprisonment adjudged by the convicting Justice shall exceed Two calendar Months, any person who shall think himself aggrieved by any such conviction, may appeal to the next Court of General or Quarter Sessions, which shall be holden not less than days after the day of such conviction, for the county or district wherein the offence was committed; and in case of such appeal, the Justices at the said Sessions shall, out of the persons returned to serve as jurymen at such Sessions, impannel a jury of Twelve disinterested men, to inquire whether the person so appealing be guilty of the felony whereof he has been convicted; and if, after hearing the evidence produced before them, the said Jury shall return a verdict of guilty, then the said Court of Sessions shall affirm such conviction, and shall order the offender to be dealt with and punished according to the conviction; but if the Jury shall return a verdict of not guilty, then the said Court of Sessions shall quash such conviction, and order the discharge of the person so appealing. Appeal.

Appendix, No. 3.

DEAR SIR, 1, John Street, Bedford Row, 26th June, 1837.

IN compliance with the desire expressed by you on Thursday last, when I attended the Police Committee for the purpose of being examined, but in consequence of there not being a quorum my evidence could not be taken, I have now to state in writing my answers to the questions which I understand the Committee intended to have put to me. Appendix, No. 3.

1st. As to the Police Vans.

Having lately inspected a number of prisons in the home district, under a special authority from Lord John Russell, I have had occasion to visit officially the New Prison, Clerkenwell, and the Westminster Bridewell. I have seen the vans which bring the prisoners from the police offices usually twice a day. Those which bring the prisoners committed at the morning sittings of the magistrates arrive about four or five o'clock in the afternoon; those from the evening sittings arrive so late as ten and eleven o'clock at night. The vans also come to the prisons in the morning, to convey remanded prisoners back for re-examination. The dimensions of the vans are eight feet four inches long, four feet five inches wide, and five feet six inches high. They will not hold conveniently more than twenty persons; but as one van calls at several police offices to take up, they sometimes bring twenty-five, and even thirty prisoners, and more. The Eastern van, for instance, calls at the Thames Police office, Lambeth-street and Worship-street, so that it is perhaps three hours before it reaches Clerkenwell prison. Those who go back to the police office for re-examination are handcuffed at the discretion of the turnkeys in batches of two, three or four. Men and women sit indiscriminately in the van; when it is very crowded they are obliged to stand, or sit on each other's knees. Women sometimes sit on the men's knees. There is no light in the vans, although the late vans, and in the winter the early vans also, travel in the dark. This has led to many irregularities; for instance, I have heard of a man taking indecent liberties with a woman in the van, and giving her half a sovereign in consequence; also of a prisoner having been robbed of his watch in the van, and of another prisoner being robbed of his pocket-book and gloves in the van, when there were thirty-four prisoners in it, and they were found upon the person of the prisoner, who sat next him. Such things are very possible now. The prisoners in the van are many of them drunk, sometimes so drunk that they cannot walk to the receiving-room without assistance. The women are often so drunk that when put to bed they are sick over the bedsteads. Some prisoners are not only filthy with vermin, but ragged to an indecent degree. Prisoners of the more respectable kind naturally complain of the vans, and I think they ought to be fitted with several compartments, in order to separate the more decent from the filthy and drunken prisoners; at all events, male prisoners ought to be entirely separated from females.

2d. Police Chains.

Prisoners are not invariably removed from the police offices in vans. Between Hatton Garden Office and Clerkenwell prison they walk handcuffed, and fastened to a chain. Five or six men, and probably the same number of women, are thus fastened together and exposed to the public gaze, in a manner which must be most painful to any decent prisoner. It has been stated to me that persons have been known to give the prisoners drink as they passed along with the chain, which is the more likely, as there are a number of public houses in the way. I understand that prisoners have been brought to Clerkenwell in this way from still greater distances, even from Kensington.

Appendix, No. 3.

3d. Abuses in Police Offices.

From the want of means of separation in the station-houses and police offices, prisoners pass the night and a part of the day in the worst possible company. I have heard of a robbery committed in a police office. I have reason to think that money is occasionally taken at the police offices from prisoners or their attornies; my reason for saying so is, that the turnkey of the gate of the Westminster Bridewell told me he was once offered a guinea by an attorney in great practice, and that on his refusing it as contrary to the rules, the attorney replied, "I am surprised the Governor should object, for our firm is in the habit of giving away from 30*l.* to 40*l.* a year at different prisons and police offices."

4. System of Remanding, and of Bail.

The number of prisoners remanded by the police magistrates for further examination has much increased of late. I am not able to account satisfactorily for this; but, if the magistrates remand by way of punishment only, such a practice is obviously improper. Out of 196 prisoners, whom I found in custody at Clerkenwell, 52 were remanded for examination, and 122 committed for want of bail. The system of bail, I think, extremely bad. Persons are constantly required to find sureties for assaults and petty offences, who have no means whatever of finding them, and who have no alternative but to go to prison, where they remain without labour or corrective discipline, sometimes for very long periods. Again, respectable persons, or gentlemen, who cannot find bail at the moment, are thus placed in a prison, where they are obliged to mix with the filthiest vagrants, and the most profligate offenders. It would surely be better to sentence for a short period to the House of Correction, with hard labour, or to impose a small fine, or even to take the personal recognizance of the party for his appearance, and run the risk of his forfeiting it. As examples of the erroneousness of this system I give you the following, within my own observation:—

J. C. in Clerkenwell prison, aged 17, committed for want of bail, on charge of an indecent offence with a man, who gave bail, but it was expected would not appear at the sessions. The boy, however, remained in the mean time in prison.

S. S. committed to Westminster Bridewell, first to the House of Correction department, with hard labour, for three months, and afterwards to the gaol department, without labour, for twelve months, for want of bail. The absurdity of this is too glaring to require comment.

H. S. a female in a state of derangement, had been in Aylesbury gaol seven months for want of bail. J. A. an idiot, in Springfield gaol for want of bail.

D. A., aged 50, has been in Chelmsford gaol twenty-two years for want of bail to keep the peace towards his own father. He is regularly employed in the service of the prison with his own consent, and has even been sent on errands into the town. His situation is so comfortable that he appears to have no wish to leave it. Many other similar instances of the abuse of imprisonment are, I have no doubt, to be found.

5th. Summary Convictions.

The expediency of extending the powers of magistrates, in regard to summary convictions, appears to me to turn upon how far you can depend upon justice being properly administered by magistrates. I should not be afraid to extend the jurisdiction of the London Police Magistrates to all cases of larceny, but in the country there would, at present, be a difficulty in arranging a proper tribunal. However, it should be remembered that the summary powers of magistrates are already very extensive indeed, so much so, that a further extension of them would produce less charge than many suppose. The Malicious Trespass Act, the Larceny Act, the Assault Act, the Revenue, Game, Vagrant and Police Laws, give very wide powers of summary conviction. The following summaries of the classes of prisoners, confined in several large prisons at the time of my visits, will exemplify this:

Westminster Bridewell:

Larcenies for trial	15
Ditto for examination	11
Convicted of felony	18
For bail	39
Convicted misdemeanants	3
Deserter	1
Debtors	2
Pawners and damagers (summary)	32
Assaults - - - - - ditto	5
Vagrants - - - - - ditto	110
Total	236

New Prison Clerkenwell:

Under examination	52
For bail	122
For trial, &c.	22
Total	196

Aylesbury

Aylesbury County Gaol:

For trial	51
Convicted at assizes and sessions	39
Summary convictions for poaching, stealing turnips, wood, &c. and petty trespasses	74
Debtors	8
TOTAL	172

Springfield County Gaol:

For trial	65
Convicted at assizes and sessions	80
Summary convictions for poaching, &c.	70
Ditto Bastardy	1
Ditto Vagrancy	22
TOTAL	238

Hertford County Gaol:

For trial	55
Convicted at assizes and sessions	21
Summary convictions, principally for poaching	89
Debtors	6
TOTAL	171

Maidstone County Gaol:

For trial	9
Convicted at assizes and sessions	124
Summary convictions	132
Debtors	38
TOTAL	303

You will see that in these instances the inmates of the prisons consist in the proportion of from one-third to one-half of summary convictions; to which I should add the following estimate:

Total number of prisoners confined in England and Wales in the year ending Michaelmas 1836, (except the King's Bench and Fleet prisons), according to the last Inspectors' Reports	99,127
Deduct debtors	11,882
	87,245
Of which were summary convictions	53,270

or about 60 per cent. The committals of assizes and sessions, according to the Criminal Tables for the last year, were 20,984, leaves a still greater portion of prisoners not tried by juries, being in the ratio of about 7 to 2 to those so tried. The preceding estimate is, therefore, rather under, than over, stated.

6th. JUVENILE OFFENDERS.

You are already so conversant with this subject, and it has been so fully treated in the First Report of the Inspectors of Prisons for the Home District, that I will only here express my fear that juvenile delinquency in the metropolis is rather on the increase. The gross number of boys aged sixteen and under, who entered the six metropolis prisons in 1835, was 2,855; and in 1836, it was 3,132. It appears by the Criminal Tables for last year, that of 20,984 offenders committed for trial in England and Wales, 2,423, or 11 $\frac{3}{4}$ per cent. did not exceed the age of sixteen; and, of 3,350 so committed in the county of Middlesex, 404, or 12 per cent. did not exceed that age. I consider the total number of offenders not exceeding the age of sixteen, who annually enter prison in England and Wales, to be about 10,000, being from 10 to 11 per cent. on the whole criminal population. This is a large proportion, especially when compared with France and Belgium. In the former of these countries the proportion of juvenile offenders is, I understand, about 5, and in the latter 6 per cent. When the bad effect of gaol contamination is considered, and also the very trifling nature of the offences for which young persons are committed, the necessity of a change of system in regard to them appears urgent. I found in Dover Gaol three boys under seventeen, who had been nine weeks in prison waiting their trial, for stealing a handful of shrimps out of an open shop window; and four others who had been waiting their trial several weeks for stealing 7 lbs. of lead. I trust that great benefits will arise from the intended Reformatory in the Isle of Wight. The plan and management of that institution deserve the attention of your Committee, as a matter of great national importance.

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difficulty of getting at the recognizance after it has become forfeited, *Disney* 802——Process of estreating a recognizance under the present law, and opinion relative to magistrates having the power of levying recognizances when they become forfeited, *Ballantine* 933–938——Letter from John Ward, esq., on the subject of committing for want of bail from police offices, *App. p.* 192——Clause recommended by Mr. Traill, for giving power to take recognizances at station-houses, on charges of petty misdemeanor, *App. p.* 182.

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Portion of the north district of Lambeth-street Office should be thrown off, in the event of the Thames Police Office being annexed to it, 912——Desirable that police magistrates should wear the bar dress, and that police offices should be made analogous to courts of justice, 913, 914——Great complaints made by persons of the bad accommodation for witnesses and persons in attendance at police offices, 914, 915——Desirable to have lock-up houses, to which respectable people might be sent for re-examination or want of bail, instead of being sent off in the prison van, 918——Magistrate has the power of sending persons to a place of custody in a coach, attended by an officer, provided the prisoner pays for the coach, 920——Opinion as to the hours of attendance of police magistrates, so as to abolish the evening sitting at police offices, 921–924.

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Ballantine, Mr. Explanation of evidence given by Mr. Ballantine in 1833, *Phillipps* 38–40.

Bar Dress. Police magistrates should be required to sit in their bar dress, *Disney* 786; *Buckle* 868; *Ballantine* 913.

Bathing. Magistrates should have a summary jurisdiction to punish people indecently exposing their persons while bathing, *Traill* 808–811——Opinion as to the time persons should be allowed to bathe, *Trail* 810, 811.

Beadles. State of crime, throughout the city, is communicated to the several wards, through the instrumentality of the ward-beadles, *Hicks* 1387–1402.

Beggars. Power of the police in clearing the streets of mendicants, and opinion that begging should not be permitted to exist, *Hardwick* 671–686.

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Best, Lord Chief Justice. State of the law under the Trespass Act, as laid down by him, *Disney* 804.

Bethnal-green. See *Lambeth-street Police Office. Private Watchmen.*

Bow-street Officers. Know their business so well as not to require instruction from the magistrate in the apprehension of offenders, *Roe* 222–226——Number of them, and nature of their duties and emoluments, *Roe* 229–235——Very superior to the metropolitan police in tracing and detecting crime, *Phillipps* 83.

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Brokers' Charges. Clause proposed by Mr. Traill, to give police magistrates a summary jurisdiction, in cases of unlawful, excessive or irregular proceedings by landlords or brokers, in certain cases, *App. p.* 186.

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Brothels. The police should have additional powers over them, *Traill* 399; *Ballantine* 982, 983; *Gregory* 1654–1678——Clause suggested by James Traill, esq., to be inserted in the Police Act, giving power to police magistrates to fine persons keeping or knowingly letting any brothel, gaming-house, &c., *App. p.* 181.

Breaking Windows. No distinction made in the punishment for breaking windows, and crime arising from confirmed habits of thieving, *Traill* 450.

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Brougham, Lord. Opinion that he carried his measure for the amendment of the criminal law too far, by including a jury in the magistrates' court, *Traill* 477.

Buckle, John. (Analysis of his Evidence.)—Recorder of Worcester, and author of a work on Prison Discipline, 819, 820——Simple larcenies chiefly tried before the recorder, 823, 824——Great number of persons committed by magistrates are acquitted at the sessions, 829——Magistrates should have power to decide upon cases of simple larceny, 829–832——Acquittals by juries, in cases of simple larceny, frequent, where the guilt is established, from the ingenious arguments of counsel, 834——Questions of fact should be left entirely to the discretion of the police magistrate, to decide whether he would send the case to the sessions or not, 837—— In case of any legal difficulty, magistrates should have power to obtain a judge's opinion thereon, 839——Magistrates should not be confined to value or age in their summary jurisdiction, 842——Magistrates should have summary jurisdiction in cases of stealing from the person, unaccompanied by violence, 843.

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Burn's Justice. No less than 283 subjects named in that work which magistrates are expected to attend to, *Disney* 704——Duties required of magistrates, as laid down in Burn's Justice, *Disney* 709, 710.

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Cambridge County Gaol. Particulars respecting its good management and system of classification adopted therein, *Ousby* 1592.

Campbell, Sir *John,* Attorney General. His opinion that the police of the several wards in the City would be under the control of the aldermen, if sworn as constables, *Corney* 1410; *Hicks* 1376.

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Carriages. Extension of the Police Act, which is necessary, in order to enable magistrates to take notice of danger from furious riding or driving, *Traill* 326-328.

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Castle Baynard Ward. The inhabitants of Castle Baynard Ward object to their watchmen being sworn in as constables, because they may be required by the aldermen on matters of parade, while the interests of the inhabitants require them in their locality, *Hicks* 1352-1355——Number of houses situate therein; district it takes in, *Hicks* 1349—— Particulars respecting the regulation of the nightly watch in that ward; plan adopted with respect to taking substitutes for ward constables; manner the beats of the watchmen are regulated, &c., *Hicks* 1347-1350——Account of the opposition shown by the inhabitants of that ward to the report of the police committee of the city of London for regulating the nightly watch, and substance of the petition presented by them against it, *Hicks* 1346, 1347.

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Clerkenwell New Prison. Numbers of prisoners confined therein, showing the proportion summarily convicted, *App. p.* 192.

Clothes of Prisoners. Very great hardships accrue to prisoners, from the police detaining their clothes and goods when committed to the house of correction, *Ousby* 1616.

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Cold Bath Fields House of Correction. Evidence relative to the system of religious instruction therein, *Ousby* 1546——Evil of committing juvenile offenders thereto, *Ousby* 1547–1559——Number of committals thereto from September 1823 to September 1824, and from September 1835 to September 1836, showing the enormous increase latterly, *Ousby* 1560——Instances of boys being committed thereto that were innocent, *Ousby* 1574–1580.

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[Second Examination.]—Manner the police committee of the city of London is composed, 1252——Plan recommended by the police committee for assimilating the day and night watch of the city, and embodying them in one system of police, 1251–1271—— Plan recommended was rejected by the common council, though adopted by the police committee, 1252——City police should be entirely under the control of the police committee, and reason thereof, 1260–1266——Plan recommended by witness is adopted under the Municipal Corporation Statute, 1266–1271——Extent of the population of the city of London, and amount of the gross population of what is called London, 1273, 1274——Metropolitan police a great improvement on the old system, 1276——Opinion that the city police would not be improved by being merged into the metropolitan police, and reasons thereof, 1278–1280.

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Venables, Mr. Alderman. Paper delivered in by him, containing the Report of the Police Committee of the city of London for regulating the nightly watch and police, 1338, *App. p.* 145.

Venison. Any person having it in his possession without being able to give a satisfactory account of it, can be dealt with summarily by a magistrate, *Buckle* 841.

See also *Fines.*

Verdicts. Acquittals sometimes given by juries at sessions where the guilt is obvious enough, *Buckle* 834——Juries generally return a wrong verdict when they take into consideration the punishment of the offence, *Buckle* 872, 873.

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Vexatious Charges. See *Station-houses.*

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Vousley, Henry White. (Analysis of his Evidence.)—Chairman of the Licensed Victuallers Protection Society, 1538—— Publicans put to extreme annoyance and inconvenience from the police not being allowed to enter public-houses to quell disturbances; in Bermondsey there are a set of men who are in the habit of visiting a public-house purposely to create disturbances, and defy the landlord to put them out, or to call in the police to assist him; landlords obliged by their license to maintain good rule and order in their houses, yet are debarred by the law of the means of so doing, 1541.

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Wakefield, Edward Gibbon. (Analysis of his Evidence.)—Comparison between the old police and the metropolitan, as regards the detection of crime and the abatement of nuisances, 1192 ——Metropolitan police have not been useful in preventing crime, 1192——Suggestions for enabling them to prevent it, 1193——Description of persons engaged in seducing children to commit crime, 1194—— Police never attempt to meddle with receivers of stolen goods, though perfectly well known to them, 1194, 1195——Particulars respecting the case of Ikey Solomon's; a great reflection is cast upon the police of the city, from allowing him so many times to escape, 1194, 1195——Debtors' prisons are great nurseries of crime, as instanced in the Fleet Prison, 1197——Evil effect of public executions, and instances of their provoking the commission of crime, 1199——Account of the degrading scene exhibited in the neighbourhood of the Old Bailey at the execution of Greenacre, 1200.

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